

TITLE 26.—INTERNAL REVENUE CODE

By Act Feb. 10, 1939, c. 2, 53 Stat. 1, Congress enacted an Internal Revenue Code which supplants the former provisions of Title 26, Internal Revenue. A Preface to this Code, set out in United States Statutes At Large, Volume 53, Part 1, pages iii, iv, provided in part as follows:

"The Internal Revenue Code, approved February 10, 1939, and published in this volume as Public Act No. 1 of the Seventy-sixth Congress, is the first Federal act of its kind since the Revised Statutes of the United States, approved June 22, 1874. Title XXXV of the Revised Statutes embraces the general and permanent statutes relating exclusively to internal revenue, in force on December 1, 1873.

"The internal revenue title, which comprises all of the Code except the preliminary sections relating to its enactment, is intended to contain all the United States statutes of a general and permanent nature relating exclusively to internal revenue, in force on January 2, 1939; also such of the temporary statutes of that description as relate to taxes the occasion of which may arise after the enactment of the Code. These statutes are codified without substantive change and with only such change of form as is required by arrangement and consolidation. The title contains no provision, except for effective date, not derived from a law approved prior to January 3, 1939:

"The separate enactments carried into the internal revenue title, wholly or in part, from the Statutes at Large are 143 in number, exclusive of 93 statutes involving express amendment, reenactment, or repeal. The 277 Revised Statutes sections codified were derived from 21 basic statutes. The whole body of internal revenue law in effect on January 2, 1939, therefore, has its ultimate origin in 164 separate enactments of Congress. The earliest of these was approved July 1, 1862; the latest, June 16, 1938.

"The Internal Revenue Code is an enactment without change of the 1939 edition of the Codification of Internal Revenue Laws prepared by Mr. Colin F. Stam and Mr. L. L. Stratton, of the staff of the Joint Committee on Internal Revenue Taxation, with the assistance of the Department of the Treasury and the Department of Justice. The bill embodying that codification, H. R. 2762, was introduced on January 18, 1939, by Mr. Doughton, of North Carolina, chairman of the Committee on Ways and Means of the House of Representatives and vice chairman of the Joint Committee on Internal Revenue Taxation. Mr. Doughton submitted the unanimously favorable report of the Committee on Ways and Means on January 20. Unanimous consent for consideration of the bill was requested and objected to on January 23. It was called up on the following Calendar Wednesday, January 25, and passed on that date by a vote of 350 to 16. On January 27, the bill was messaged to the Senate and referred to the Committee on Finance, before whom a hearing was held on the 30th. At the direction of Mr. Harrison, of Mississippi, chairman of the Joint Committee on Internal Revenue Taxation and of the Committee on Finance, Mr. George, of Georgia, a member of both committees, submitted the unanimously favorable report of the Committee on Finance on February 1. The bill was considered by the Senate on the following day and passed without a record vote.

"The 1939 codification was the fourth to be published by the staff of the Joint Committee on Internal Revenue Taxation. The first, published in 1930, embraced the general and permanent internal revenue laws in force on December 1, 1930; the second, published in 1933, the laws in force on July 16, 1932; and the third, published in 1938, the laws in force at the beginning of that year."

Distribution Table. Tables showing where corresponding sections of former Title 26, Internal Revenue, are now incorporated in Internal Revenue Code, set out herein, will be found in Parallel Reference Tables at end of this Supplement.

§ 1. Internal Revenue Code. The laws of the United States hereinafter codified and set forth as a part of this act¹ under the heading "Internal Revenue Title" are hereby enacted into law. (53 Stat. 1.)

¹ Act Feb. 10, 1939, c. 2, 53 Stat. 1-504.

§ 2. Citation. This act¹ and the internal revenue title incorporated herein shall be known as the Internal Revenue Code and may be cited as "I. R. C." (53 Stat. 1.)

¹ Act Feb. 10, 1939, c. 2, 53 Stat. 1-504.

§ 3. Effective date. Except as otherwise provided herein, this act¹ shall take effect on the day following the date of its enactment. (53 Stat. 1.)

¹ Act Feb. 10, 1939, c. 2, 53 Stat. 1-504.

§ 4. Repeal and savings provisions. (a) The Internal Revenue Title, as hereinafter set forth, is intended to include all general laws of the United States and parts of such laws, relating exclusively to internal

revenue, in force on the 2d day of January 1939 (1) of a permanent nature and (2) of a temporary nature if embraced in said Internal Revenue Title. In furtherance of that purpose, all such laws and parts of laws codified herein, to the extent they relate exclusively to internal revenue, are repealed, effective, except as provided in section 5, on the day following the date of the enactment of this act.¹

(b) Such repeal shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been made; nor shall any office, position, employment, board, or committee, be abolished by such repeal, but the same shall continue under the pertinent provisions of the Internal Revenue Title.

(c) All offenses committed, and all penalties or forfeitures incurred under any statute hereby repealed, may be prosecuted and punished in the same manner and with the same effect as if this act¹ had not been passed.

(d) All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this act¹ had not been passed.

(e) The authority vested in the President of the United States, or in any officer or officers of the Treasury Department, by the law as it existed immediately prior to the enactment of this act,¹ hereafter to give publicity to tax returns required under any internal revenue law in force immediately prior to the enactment of this act or any information therein contained, and to furnish copies thereof and to prescribe the terms and conditions upon which such publicity may be given or such copies furnished, and to make rules and regulations with respect to such publicity, is hereby preserved. And the provisions of law authorizing such publicity and prescribing the terms, conditions, limitations, and restrictions upon such publicity and upon the use of the information gained through such publicity and the provisions of law prescribing penalties for unlawful publicity of such returns and for unlawful use of such information are hereby preserved and continued in full force and effect. (53 Stat. 1.)

¹ Act Feb. 10, 1939, c. 2, 53 Stat. 1-504.

§ 5. Continuance of existing law. Any provision of law in force on the 2d day of January 1939 corresponding to a provision contained in the Internal Revenue Title shall remain in force until the corresponding provision under such Title takes effect. (53 Stat. 1a.)

§ 6. Arrangement, classification, and cross references. The arrangement and classification of the several provisions of the Internal Revenue Title have been made for the purpose of a more convenient and orderly arrangement of the same, and, therefore, no inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion thereof, nor shall any outline, analysis, cross reference, or descriptive matter relating to the contents of said Title be given any legal effect. (53 Stat. 1a.)

§ 7. Effect upon subsequent legislation. The enactment of this act¹ shall not repeal nor affect any act of Congress passed since the 2d day of January 1939,

and all acts passed since that date shall have full effect as if passed after the enactment of this act;¹ but, so far as such acts vary from, or conflict with, any provision contained in this act,¹ they are to have effect as subsequent statutes, and as repealing any portion of this act¹ inconsistent therewith. (53 Stat. 1a.)

¹ Act Feb. 10, 1939, c. 2, 53 Stat. 1-504.

§ 8. Copies as evidence of original. Copies of this act¹ printed at the Government Printing Office and bearing its imprint shall be conclusive evidence of the original Internal Revenue Code in the custody of the Secretary of State. (53 Stat. 1a.)

¹ Act Feb. 10, 1939, c. 2, 53 Stat. 1-504.

§ 9. Publication. The said Internal Revenue Code shall be published as a separate part of a volume of the United States Statutes at Large,¹ with an appendix and index, but without marginal references; the date of enactment, bill number, public and chapter number shall be printed as a headnote. (53 Stat. 1a.)

¹ United States Statutes at Large, Volume 53, Part 1, Internal Revenue Code.

§ 10. Internal Revenue Title. The Internal Revenue Title, heretofore referred to, and hereby and herein enacted into law, is as follows: (53 Stat. 1a.)

Internal Revenue Title

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SUBCHAPTER A.—INTRODUCTORY PROVISIONS

§ 1. Application of chapter. The provisions of this chapter shall apply only to taxable years beginning after December 31, 1938. Income, war-profits, and excess-profits taxes for taxable years beginning prior to January 1, 1939, shall not be affected by the provisions of this chapter, but shall remain subject to the applicable provisions of the Revenue Act of 1938 and prior revenue acts, except as such provisions are modified by legislation enacted subsequent to the Revenue Act of 1938. (53 Stat. 4.)

Derived from Act May 28, 1938, c. 289, § 1, 52 Stat. 452. Similar provisions. Acts June 22, 1936, c. 690, § 1, 49 Stat. 1652; May 10, 1934, c. 277, § 1, 48 Stat. 683; June 6, 1932, c. 209, § 1, 47 Stat. 173; May 29, 1928, c. 852, § 1, 45 Stat. 795.

§ 2. Cross references. The cross references in this chapter to other portions of the chapter, where the word "see" is used, are made only for convenience, and shall be given no legal effect. (53 Stat. 4.)

Derived from Act May 28, 1938, c. 289, § 2, 52 Stat. 452.

Similar provisions. Acts June 22, 1936, c. 690, § 2, 49 Stat. 1652; May 10, 1934, c. 277, § 2, 48 Stat. 684; June 6, 1932, c. 209, § 2, 47 Stat. 173; May 29, 1928, c. 852, § 2, 45 Stat. 795.

§ 3. Classification of provisions. The provisions of this chapter are herein classified and designated as—
 Subchapter A—Introductory provisions,

Subchapter B—General provisions, divided into Parts and sections,

Subchapter C—Supplemental provisions, divided into Supplements and sections. (53 Stat. 4.)

Derived from Act May 28, 1938, c. 289, § 3, 52 Stat. 452. Similar provisions. Acts June 22, 1936, c. 690, § 3, 49 Stat. 1652; May 10, 1934, c. 277, § 3, 48 Stat. 684; June 6, 1932, c. 209, § 3, 47 Stat. 174; May 29, 1928, c. 852, § 3, 45 Stat. 795.

§ 4. **Special classes of taxpayers.** The application of the General Provisions and of Supplements A to D, inclusive, to each of the following special classes of taxpayers, shall be subject to the exceptions and additional provisions found in the Supplement applicable to such class, as follows:

(a) Estates and trusts and the beneficiaries thereof,—Supplement E.

(b) Members of partnerships,—Supplement F.

(c) Insurance companies,—Supplement G.

(d) Nonresident alien individuals,—Supplement H.

(e) Foreign corporations.—Supplement I.

(f) Individual citizens of any possession of the United States who are not otherwise citizens of the United States and who are not residents of the United States,—Supplement J.

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(h) China Trade Act corporations,—Supplement K.

(i) Foreign personal holding companies and their shareholders,—Supplement P.

(j) Mutual investment companies—Supplement. (53 Stat. 4.)

Derived from Act May 28, 1938, c. 289, § 4, 52 Stat. 452. Similar provisions. Acts Aug. 20, 1937, c. 815, Title 2, § 207 (a), 50 Stat. 826; June 22, 1936, c. 690, § 4, 49 Stat. 1653; May 10, 1934, c. 277, § 4, 48 Stat. 684; Act June 6, 1932, c. 209, § 4, 47 Stat. 174; May 29, 1928, c. 852, § 4, 45 Stat. 795.

SUBCHAPTER B.—GENERAL PROVISIONS

PART I.—RATES OF TAX

§ 11. **Normal tax on individuals.** There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax of 4 per centum of the amount of the net income in excess of the credits against net income provided in section 25. (53 Stat. 5.)

Derived from Act May 28, 1938, c. 289, § 11, 52 Stat. 452. Similar provisions. Acts June 22, 1936, c. 690, § 11, 49 Stat. 1653; May 10, 1934, c. 277, § 11, 48 Stat. 684; June 6, 1932, c. 209, § 11, 47 Stat. 174; May 29, 1928, c. 852, § 11, 45 Stat. 795; Feb. 26, 1926, c. 27, § 210, 44 Stat. 21; June 2, 1924, c. 234, § 210, 43 Stat. 264; Nov. 23, 1921, c. 136, § 210, as amended by Act Mar. 4, 1923, c. 280, § 1, 42 Stat. 1507; Feb. 24, 1919, c. 18, § 210, 40 Stat. 84; Sept. 8, 1916, c. 463, § 1 (a), 39 Stat. 756; Oct. 3, 1913, c. 16, § 11, A, Subd. 1, 38 Stat. 166.

§ 12. **Surtax on individuals—(a) Definition of "surtax net income."** As used in this section the term "surtax net income" means the amount of the net income in excess of the credits against net income provided in section 25 (b).

(b) **Rates of surtax.** There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows:

Upon a surtax net income of \$4,000 there shall be no surtax; upon surtax net incomes in excess of \$4,000 and not in excess of \$6,000, 4 per centum of such excess.

\$80 upon surtax net incomes of \$6,000; and upon surtax net incomes in excess of \$6,000 and not in excess of \$8,000, 5 per centum in addition of such excess.

\$180 upon surtax net incomes of \$8,000; and upon surtax net incomes in excess of \$8,000 and not in excess of \$10,000, 6 per centum in addition of such excess.

\$300 upon surtax net incomes of \$10,000; and upon surtax net incomes in excess of \$10,000 and not in excess of \$12,000, 7 per centum in addition of such excess.

\$440 upon surtax net incomes of \$12,000; and upon surtax net incomes in excess of \$12,000 and not in excess of \$14,000, 8 per centum in addition of such excess.

\$600 upon surtax net incomes of \$14,000; and upon surtax net incomes in excess of \$14,000 and not in excess of \$16,000, 9 per centum in addition of such excess.

\$780 upon surtax net incomes of \$16,000; and upon surtax net incomes in excess of \$16,000 and not in excess of \$18,000, 11 per centum in addition of such excess.

\$1,000 upon surtax net incomes of \$18,000; and upon surtax net incomes in excess of \$18,000 and not in excess of \$20,000, 13 per centum in addition of such excess.

\$1,260 upon surtax net incomes of \$20,000; and upon surtax net incomes in excess of \$20,000 and not in excess of \$22,000, 15 per centum in addition of such excess.

\$1,560 upon surtax net incomes of \$22,000; and upon surtax net incomes in excess of \$22,000 and not in excess of \$26,000, 17 per centum in addition of such excess.

\$2,240 upon surtax net incomes of \$26,000; and upon surtax net incomes in excess of \$26,000 and not in excess of \$32,000, 19 per centum in addition of such excess.

\$3,380 upon surtax net incomes of \$32,000; and upon surtax net incomes in excess of \$32,000 and not in excess of \$38,000, 21 per centum in addition of such excess.

\$4,640 upon surtax net incomes of \$38,000; and upon surtax net incomes in excess of \$38,000 and not in excess of \$44,000, 24 per centum in addition of such excess.

\$6,080 upon surtax net incomes of \$44,000; and upon surtax net incomes in excess of \$44,000 and not in excess of \$50,000, 27 per centum in addition of such excess.

\$7,700 upon surtax net incomes of \$50,000; and upon surtax net incomes in excess of \$50,000 and not in excess of \$56,000, 31 per centum in addition of such excess.

\$9,560 upon surtax net incomes of \$56,000; and upon surtax net incomes in excess of \$56,000 and not in excess of \$62,000, 35 per centum in addition of such excess.

\$11,660 upon surtax net incomes of \$62,000; and upon surtax net incomes in excess of \$62,000 and not in excess of \$68,000, 39 per centum in addition of such excess.

\$14,000 upon surtax net incomes of \$68,000; and upon surtax net incomes in excess of \$68,000 and not in excess of \$74,000, 43 per centum in addition of such excess.

\$16,580 upon surtax net incomes of \$74,000; and upon surtax net incomes in excess of \$74,000 and not in excess of \$80,000, 47 per centum in addition of such excess.

\$19,400 upon surtax net incomes of \$80,000; and upon surtax net incomes in excess of \$80,000 and not in excess of \$90,000, 51 per centum in addition of such excess.

\$24,500 upon surtax net incomes of \$90,000; and upon surtax net incomes in excess of \$90,000 and not in excess of \$100,000, 55 per centum in addition of such excess.

\$30,000 upon surtax net incomes of \$100,000; and upon surtax net incomes in excess of \$100,000 and not in excess of \$150,000, 58 per centum in addition of such excess.

\$59,000 upon surtax net incomes of \$150,000; and upon surtax net incomes in excess of \$150,000 and not in excess of \$200,000, 60 per centum in addition of such excess.

\$89,000 upon surtax net incomes of \$200,000; and upon surtax net incomes in excess of \$200,000 and not in excess of \$250,000, 62 per centum in addition of such excess.

\$120,000 upon surtax net incomes of \$250,000; and upon surtax net incomes in excess of \$250,000 and not in excess of \$300,000, 64 per centum in addition of such excess.

\$152,000 upon surtax net incomes of \$300,000; and upon surtax net incomes in excess of \$300,000 and not in excess of \$400,000, 66 per centum in addition of such excess.

\$218,000 upon surtax net incomes of \$400,000; and upon surtax net incomes in excess of \$400,000 and not in excess of \$500,000, 68 per centum in addition of such excess.

\$286,000 upon surtax net incomes of \$500,000; and upon surtax net incomes in excess of \$500,000 and not in excess of \$750,000, 70 per centum in addition of such excess.

\$461,000 upon surtax net incomes of \$750,000; and upon surtax net incomes in excess of \$750,000 and not in excess of \$1,000,000, 72 per centum in addition of such excess.

\$641,000 upon surtax net incomes of \$1,000,000; and upon surtax net incomes in excess of \$1,000,000 and not in excess of \$2,000,000, 73 per centum in addition of such excess.

\$1,371,000 upon surtax net incomes of \$2,000,000; and upon surtax net incomes in excess of \$2,000,000 and not in excess of \$5,000,000, 74 per centum in addition of such excess.

\$3,591,000 upon surtax net incomes of \$5,000,000; and upon surtax net incomes in excess of \$5,000,000, 75 per centum in addition of such excess.

(c) Tax in case of capital gains or losses.

For rate and computation of alternative tax in lieu of normal tax and surtax in the case of a capital gain or loss from the sale or exchange of capital assets held for more than eighteen months, see section 117 (c).

(d) Sale of oil or gas properties.

For limitation of surtax attributable to the sale of oil or gas properties, see section 105.

(e) Tax on personal holding companies.

For surtax on personal holding companies, see section 500.

(f) Avoidance of surtaxes by incorporation.

For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102.

(53 Stat. 5.)

Derived from Act May 28, 1938, c. 289, § 12, 52 Stat. 453. Similar provisions. Act June 22, 1936, c. 690, § 12, 49 Stat. 1653, as amended by Act Aug. 26, 1937, c. 815, Title 1, § 2, 50 Stat. 817; Acts Aug. 30, 1935, c. 829, §§ 101, 107, 49 Stat. 1014, 1019; May 10, 1934, c. 277, § 12, 48 Stat. 684; June 6, 1932, c. 209, § 12, 47 Stat. 174; May 29, 1928, c. 852, § 12, 45 Stat. 796; Feb. 26, 1926, c. 27, § 211, 44 Stat. 21; June 2, 1924, c. 234, § 211, 43 Stat. 265; Nov. 23, 1921, c. 136, § 211, 42 Stat. 233; Feb. 24, 1919, c. 18, § 211, 40 Stat. 1062; Oct. 3, 1917, c. 63, § 2, 40 Stat. 301; Sept. 8, 1916, c. 463, § 1 (b), 39 Stat. 756; Oct. 3, 1913, c. 16, § II, A, subd. 2, 38 Stat. 166.

§ 13. Tax on corporations in general—(a) Adjusted net income. For the purposes of this chapter the term "adjusted net income" means the net income minus the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations.

(b) Imposition of tax. There shall be levied, collected, and paid for each taxable year upon the net income of every corporation the net income of which is more than \$25,000 (except a corporation subject to the tax imposed by section 14, section 231 (a), Supplement G, or Supplement Q) a tax computed under subsection (c) of this section or a tax computed under subsection (d) of this section, whichever tax is the lesser.

(c) General rule. The tax computed under this subsection shall be as follows:

(1) A tentative tax shall first be computed equal to 19 per centum of the adjusted net income.

(2) The tax shall be the tentative tax reduced by the sum of—

(A) 16½ per centum of the credit for dividends received provided in section 26 (b); and

(B) 2½ per centum of the dividends paid credit provided in section 27, but not to exceed 2½ per centum of the adjusted net income.

(d) Alternative tax (corporations with net income slightly more than \$25,000).

(1) If no portion of the gross income consists of interest allowed as a credit by section 26 (a) (relating to interest on certain obligations of the United

States and Government corporations), or of dividends of the class with respect to which credit is allowed by section 26 (b), then the tax computed under this subsection shall be equal to \$3,525, plus 32 per centum of the amount of the net income in excess of \$25,000.

(2) If any portion of the gross income consists of such interest or dividends, then the tax computed under this subsection shall be as follows:

(A) The net income shall be divided into two divisions, the first division consisting of \$25,000, and the second division consisting of the remainder of the net income.

(B) To the first division shall be allocated, until an aggregate of \$25,000 has been so allocated: First, the portion of the gross income consisting of such interest; second, the portion of the gross income consisting of such dividends; and third, an amount equal to the excess, if any, of \$25,000 over the amounts already allocated to the first division.

(C) To the second division shall be allocated, until there has been so allocated an aggregate equal to the excess of the net income over \$25,000: First, the portion of the gross income consisting of such interest which is not already allocated to the first division; second, the portion of the gross income consisting of such dividends which is not already allocated to the first division; and third, an amount equal to the excess, if any, of the net income over the sum of \$25,000 plus the amounts already allocated to the second division.

(D) The tax shall be equal to the sum of the following:

(i) A tax on the \$25,000 allocated to the first division, computed under section 14 (c), on the basis of the allocation made to the first division and as if the amount so allocated constituted the entire net income of the corporation.

(ii) 12 per centum of the dividends received allocated as such to the second division.

(iii) 32 per centum of the remainder of the amount allocated to the second division, except interest allowed as a credit under section 26 (a).

(e) Corporations in bankruptcy and receivership.

If a domestic corporation is for any portion of the taxable year in bankruptcy under the laws of the United States, or insolvent and in receivership in any court of the United States or of any State, Territory, or the District of Columbia, then, when the tax is computed under subsection (c), the tentative tax shall be reduced by 2½ per centum of the adjusted net income, instead of by 2½ per centum of the dividends paid credit.

(f) Joint-stock land banks. In the case of a joint-stock land bank organized under the Federal Farm Loan Act, 39 Stat. 360, 42 Stat. 1454 (U. S. C. Title 12, § 641), as amended, when the tax is computed under subsection (c), the tentative tax shall be reduced by 2½ per centum of the adjusted net income, instead of by 2½ per centum of the dividends paid credit.

(g) Rental housing corporations. In the case of a corporation which at the close of the taxable year is regulated or restricted by the Federal Housing Administrator under section 207 (b) (2) of the National Housing Act, as amended, 52 Stat. 17, when the tax is computed under subsection (c), the tentative tax shall be reduced by 2½ per centum of the adjusted net income, instead of by 2½ per centum of the dividends paid credit; but only if such Administrator certifies to the Commissioner the fact that such regulation or restriction existed at the close of the taxable year. It shall be the duty of such Administrator promptly to make such certification to the Commissioner after the close of the taxable year of each corporation which is so regulated or restricted by him.

(h) Exempt corporations.

For corporations exempt from taxation under this chapter, see section 101.

(i) Tax on personal holding companies.

For surtax on personal holding companies, see section 500.

(j) Improper accumulation of surplus.

For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102.

(53 Stat. 7.)

Section amended by Act June 29, 1939, c. 247, Title II, § 201, 53 Stat. 863, which was made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. As amended section 13 reads as follows:

"Sec. 13. Tax on Corporations in General. (a) DEFINITIONS.—For the purposes of this chapter—

"(1) ADJUSTED NET INCOME.—The term 'adjusted net income' means the net income minus the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations.

"(2) NORMAL-TAX NET INCOME.—The term 'normal-tax net income' means the adjusted net income minus the credit for dividends received provided in section 26 (b).

"(b) IMPOSITION OF TAX.—There shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every corporation the normal-tax net income of which is more than \$25,000 (except a corporation subject to the tax imposed by section 14, section 231 (a), Supplement G, or Supplement Q) whichever of the following taxes is the lesser:

"(1) GENERAL RULE.—A tax of 18 per centum of the normal-tax net income; or

"(2) ALTERNATIVE TAX (CORPORATIONS WITH NORMAL-TAX NET INCOME SLIGHTLY MORE THAN \$25,000).—A tax of \$3,525, plus 32 per centum of the amount of the normal-tax net income in excess of \$25,000.

"(c) EXEMPT CORPORATIONS.—

"For corporations exempt from taxation under this chapter, see section 101.

"(d) TAX ON PERSONAL HOLDING COMPANIES.—

"For surtax on personal holding companies, see section 500.

"(e) IMPROPER ACCUMULATION OF SURPLUS.—

"For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102."

Derived from Act May 28, 1938, c. 289, § 13, 52 Stat. 455. Similar provisions. Act June 22, 1936, c. 690, §§ 13, 14, 49 Stat. 1655, as section 14 was amended by Act Aug. 26, 1937, c. 815, Title I, § 2, 50 Stat. 817; Act May 10, 1934, c. 277, § 13, 48 Stat. 686, as amended by Act Aug. 30, 1935, c. 829, § 102 (a), 49 Stat. 1015; Acts June 6, 1932, c. 209, § 13, 47 Stat. 177; May 29, 1928, c. 852, § 13, 45 Stat. 797; Feb. 26, 1926, c. 27, § 230, 44 Stat. 39; June 2, 1924, c. 234, § 230, 43 Stat. 282; Nov. 23, 1921, c. 136, §§ 229, 230, 42 Stat. 252; Oct. 3, 1917, c. 63, § 4, 40 Stat. 302; Sept. 8, 1916, c. 463, § 10, 39 Stat. 765, as amended by Act Oct. 3, 1917, c. 63, § 1206, 40 Stat. 333; Oct. 3, 1913, c. 16, § II, G, 38 Stat. 172.

§ 14. Tax on special classes of corporations.—(a) Special class net income. For the purposes of this chapter the term "special class net income" means the adjusted net income minus the credit for dividends received provided in section 26 (b).

(b) Imposition of tax. There shall be levied, collected, and paid for each taxable year upon the special class net income of the following corporations (in lieu of the tax imposed by section 13) the tax hereinafter in this section specified.

(c) Corporations with net incomes of not more than \$25,000. If the net income of the corporation does not come within one of the classes specified in subsection (d), (e), (f), or (g) of this section, the tax shall be as follows:

Upon special class net incomes not in excess of \$5,000, 12½ per centum.

\$625 upon special class net incomes of \$5,000, and upon special class net incomes in excess of \$5,000 and not in excess of \$20,000, 14 per centum in addition of such excess.

\$2,725 upon special class net incomes of \$20,000, and upon special class net incomes in excess of \$20,000, 16 per centum in addition of such excess.

(d) Special classes of corporations. In the case of the following corporations the tax shall be an amount equal to 16½ per centum of the special class net income, regardless of the amount thereof:

(1) Banks, as defined in section 104.

(2) Corporations organized under the China Trade Act, 1922, (42 Stat. 849 (U. S. C., Title 15, c. 4).)

(3) Corporations which, by reason of deriving a large portion of their gross income from sources within a possession of the United States, are entitled to the benefits of section 251.

(e) Foreign corporations. (1) In the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein, the tax shall be an amount equal

to 19 per centum of the special class net income, regardless of the amount thereof.

(2) In the case of a foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, the tax shall be as provided in section 231 (a).

(f) Insurance companies. In the case of insurance companies, the tax shall be as provided in Supplement G.

(g) Mutual investment companies. In the case of mutual investment companies, as defined in Supplement Q, the tax shall be as provided in such Supplement.

(h) Exempt corporations.

"For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102."

(i) Tax on personal holding companies.

For surtax on personal holding companies, see section 500.

(j) Improper accumulation of surplus.

For surtax on corporations which accumulate surplus to avoid surtax on stockholders, see section 102.

(53 Stat. 8.)

Section amended by Act June 29, 1939, c. 247, Title II, § 201, 53 Stat. 863, which was made applicable only with respect to taxable years beginning after December 31, 1939 by § 229 of said act. As amended section 14 reads as follows:

"Sec. 14. Tax on Special Classes of Corporations. (a) IMPOSITION OF TAX.—There shall be levied, collected, and paid for each taxable year upon the normal-tax net income of the following corporations (in lieu of the tax imposed by section 13) the tax hereinafter in this section specified.

"(h) CORPORATIONS WITH NORMAL-TAX NET INCOMES OF NOT MORE THAN \$25,000.—If the normal-tax net income of the corporation is not more than \$25,000, and if the corporation does not come within one of the classes specified in subsection (c), (d), or (e) of this section, the tax shall be as follows:

"Upon normal-tax net incomes not in excess of \$5,000, 12½ per centum.

"\$625 upon normal-tax net incomes of \$5,000, and upon normal-tax net incomes in excess of \$5,000 and not in excess of \$20,000, 14 per centum in addition of such excess.

"\$2,725 upon normal-tax net incomes of \$20,000, and upon normal-tax net incomes in excess of \$20,000, 16 per centum in addition of such excess.

"(c) FOREIGN CORPORATIONS.—

"(1) In the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein, the tax shall be an amount equal to 18 per centum of the normal-tax net income, regardless of the amount thereof.

"(2) In the case of a foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, the tax shall be as provided in section 231 (a).

"(d) INSURANCE COMPANIES.—In the case of insurance companies, the tax shall be as provided in Supplement G.

"(e) MUTUAL INVESTMENT COMPANIES.—In the case of mutual investment companies, as defined in Supplement Q, the tax shall be as provided in such Supplement.

"(f) EXEMPT CORPORATIONS.—

"For corporations exempt from taxation under this chapter, see section 101.

"(g) TAX ON PERSONAL HOLDING COMPANIES.—

"For surtax on personal holding companies, see section 500.

"(h) IMPROPER ACCUMULATION OF SURPLUS.—

"For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102."

Derived from Act May 28, 1938, c. 289, § 14, 52 Stat. 456.

Similar provisions. Act June 22, 1936, c. 690, §§ 13, 14, 49 Stat. 1655, as section 14 was amended by Act Aug. 26, 1937, c. 815, Title I, § 2, 50 Stat. 817, Act May 10, 1934, c. 277, § 13, 48 Stat. 686, as amended by Act Aug. 30, 1935, c. 829, § 102 (a), 49 Stat. 1015.

§ 15. Corporate taxes effective for two taxable years. The taxes imposed by section 13, section 14 (except subsection (e) (2)), Supplement G, or Supplement Q, of this chapter, or by section 13, section 14, or Supplement G of the Revenue Act of 1936, shall not apply to any taxable year beginning after December 31, 1939. (53 Stat. 9.)

Repeal. Section 15 relating to corporate taxes effective for two taxable years was omitted by Act June 29, 1939, 10 p. m., c. 247, Title II, § 201, 53 Stat. 863, which amended sections 13, 14, and 15 to "read as follows" and failed to reenact section 15. Amendment omitting section 15 was made applicable only with respect to taxable years beginning after December 31, 1939 by § 229 of said act.

Derived from Act May 28, 1938, c. 289, § 15, 52 Stat. 457.

PART II.—COMPUTATION OF NET INCOME

§ 21. Net income.—(a) Definition. "Net income" means the gross income computed under section 22, less the deductions allowed by section 23.

(b) **Cross references.** For definition of "adjusted net income" and "normal-tax net income", see section 13. (53 Stat. 9, as amended June 29, 1939, 10 p. m., E. S. T., c. 247, Title II, § 210 (a), 53 Stat. 866.)

Subsec. (b) was amended by Act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsection read as follows:

"(b) **Cross references**

"For definition of 'adjusted net income', see section 13 (a); for definition of 'special class net income', see section 14 (a)."

Derived from Act May 28, 1938, c. 289, § 21, 52 Stat. 457. Similar provisions. Acts June 22, 1936, c. 690, § 21, 49 Stat. 1657; May 10, 1934, c. 277, § 21, 48 Stat. 686; June 6, 1932, c. 209, § 21, 47 Stat. 178; May 29, 1928, c. 852, § 21, 45 Stat. 797; Feb. 26, 1926, c. 27, § 212, 44 Stat. 23; June 2, 1924, c. 234, § 212, 43 Stat. 267.

§ 22. **Gross income.**—(a) **General definition.** "Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly. In the case of judges of courts of the United States who took office on or before June 6, 1932, the compensation received as such shall be included in gross income. (As amended April 12, 1939, c. 59, Title I, §§ 1, 3, 53 Stat. 574, 575.)

(b) **Exclusions from gross income.** The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(1) **Life insurance.** Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or otherwise (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income);

(2) **Annuities, etc.** Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to 3 per centum of the aggregate premiums or consideration paid for such annuity (whether or not paid during such year), until the aggregate amount excluded from gross income under this chapter or prior income tax laws in respect of such annuity equals the aggregate premiums or consideration paid for such annuity. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under paragraph (1) or this paragraph;

(3) **Gifts, bequests, and devises.** The value of property acquired by gift, bequest, devise, or inher-

ance (but the income from such property shall be included in gross income);

(4) **Tax-free interest.** Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) obligations of a corporation organized under Act of Congress, if such corporation is an instrumentality of the United States; or (C) the obligations of the United States or its possessions. Every person owning any of the obligations enumerated in clause (A), (B), or (C) shall, in the return required by this chapter, submit a statement showing the number and amount of such obligations owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after September 1, 1917 (other than postal savings certificates of deposit) and in the case of obligations of a corporation organized under Act of Congress, the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt from the taxes imposed by this chapter;

(5) **Compensation for injuries or sickness.** Amounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness;

(6) **Ministers.** The rental value of a dwelling house and appurtenances thereof furnished to a minister of the gospel as part of his compensation;

(7) **Income exempt under treaty.** Income of any kind, to the extent required by any treaty obligation of the United States;

(8) **Miscellaneous items.** The following items, to the extent provided in section 116:

Earned income from sources without the United States;

Salaries of certain Territorial employees;

The income of foreign governments;

Income of States, municipalities, and other political subdivisions;

Receipts of shipowners' mutual protection and indemnity associations;

Dividends from China Trade Act corporations;

Compensation of employees of foreign governments.

(9) **Income from discharge of indebtedness.** In the case of a corporation, the amount of any income of the taxpayer attributable to the discharge, within the taxable year, of any indebtedness of the taxpayer or for which the taxpayer is liable evidenced by a security (as hereinafter in this paragraph defined) if—

(A) it is established to the satisfaction of the Commissioner, or

(B) it is certified to the Commissioner by any Federal agency authorized to make loans on behalf of the United States to such corporation or by any Federal agency authorized to exercise regulatory power over such corporation,

that at the time of such discharge the taxpayer was in an unsound financial condition, and if the taxpayer makes and files at the time of filing the return, in such manner as the Commissioner, with the approval of the Secretary, by regulations prescribes, its consent to the regulations prescribed under section 113 (b) (3) then in effect. In such case the amount of any income of the taxpayer attributable to any unamortized premium (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be included in gross income and the amount of the deduction attributable to any unamortized discount (computed as of the first day of the taxable year in which such discharge occurred) with respect to such indebtedness shall not be allowed as a deduction. As used in this paragraph the term "security" means any bond, debenture, note,

or certificate, or other evidence of indebtedness, issued by any corporation, in existence on June 1, 1939. This paragraph shall not apply to any discharge occurring before the date of the enactment of the Revenue Act of 1939,¹ or in a taxable year beginning after December 31, 1942. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 215 (a), 53 Stat. 875.)

(c) **Inventories.** Whenever in the opinion of the Commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

(d) **Method of inventorying goods.** (1) A taxpayer may use the following method (whether or not such method has been prescribed under subsection (c)) in inventorying goods specified in the application required under paragraph (2):

(A) Inventory them at cost;

(B) Treat those remaining on hand at the close of the taxable year as being: First, those included in the opening inventory of the taxable year (in the order of acquisition) to the extent thereof, and second, those acquired in the taxable year; and

(C) Treat those included in the opening inventory of the taxable year in which such method is first used as having been acquired at the same time and determine their cost by the average cost method.

(2) The method described in paragraph (1) may be used—

(A) Only in inventorying goods (required under subsection (c) to be inventoried) specified in an application to use such method filed at such time and in such manner as the Commissioner may prescribe; and

(B) Only if the taxpayer establishes to the satisfaction of the Commissioner that the taxpayer has used no procedure other than that specified in subparagraphs (B) and (C) of paragraph (1) in inventorying (to ascertain income, profit, or loss, for credit purposes, or for the purpose of reports to shareholders, partners, or other proprietors, or to beneficiaries) such goods for any period beginning with or during the first taxable year for which the method described in paragraph (1) is to be used.

(3) The change to, and the use of, such method shall be in accordance with such regulations as the Commissioner, with the approval of the Secretary, may prescribe as necessary in order that the use of such method may clearly reflect income.

(4) In determining income for the taxable year preceding the taxable year for which such method is first used, the closing inventory of such preceding year of the goods specified in such application shall be at cost.

(5) If a taxpayer, having complied with paragraph (2), uses the method described in paragraph (1) for any taxable year, then such method shall be used in all subsequent taxable years unless—

(A) With the approval of the Commissioner a change to a different method is authorized; or

(B) The Commissioner determines that the taxpayer has used for any period beginning with or during any subsequent taxable year some procedure other than that specified in subparagraph (B) of paragraph (1) in inventorying (for ascertaining income, profit, or loss, for credit purposes, or for the purpose of reports to shareholders, partners, or other proprietors, or to beneficiaries) the goods specified in the application, and requires a change to a method different from that prescribed in paragraph (1) beginning with such subsequent taxable year or any taxable year thereafter.

In either of the above cases, the change to, and the use of, the different method shall be in accordance with such regulations as the Commissioner, with the approval of the Secretary, may prescribe as necessary in order that the use of such method may clearly reflect income. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 219 (a), 53 Stat. 877.)

(e) **Distributions by corporations.** Distributions by corporations shall be taxable to the shareholders as provided in section 115.

(f) **Determination of gain or loss.** In the case of a sale or other disposition of property, the gain or loss shall be computed as provided in section 111.

(g) **Gross income from sources within and without United States.**

For computation of gross income from sources within and without the United States, see section 119.

(h) **Foreign personal holding companies.**

For provisions relating to gross income of foreign personal holding companies and of their shareholders, see section 334.

(i) **Consent dividends.**

For inclusion in gross income of amounts specified in shareholders' consents, see section 28.

(j) **Income from mortgages made or obligations issued by joint stock land banks.**

For taxable status of income derived from mortgages made or obligations issued by joint stock land banks, see section 3799.

(53 Stat. 9, as amended April 12, 1939, c. 59, Title I, §§ 1, 3, 53 Stat. 574, 575; June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, §§ 215 (a), 219 (a), 53 Stat. 875, 876.)

¹ Revenue Act of 1939 enacted June 29, 1939, 10 p. m. E. S. T.

Act June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 219 (c), 53 Stat. 877, provided as follows: "(c) **AMENDMENT TO 1938 ACT.**—Section 22 (d) of the Revenue Act of 1938 (relating to inventories in certain industries) is amended to read as follows:

"(d) If the inventory method described in section 22 (d) (1), as amended, of the Internal Revenue Code is used for the first taxable year beginning after December 31, 1938, then, in determining income for the preceding taxable year, the closing inventory of such year of the goods specified in the application under section 22 (d) (2), as amended, of such Code shall be at cost."

Sections 1 and 3 of the Act of April 12, 1939, cited to the text, amended paragraph (a) of this section by inserting the words "including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing" after the words "compensation for personal service," and by adding the last sentence of paragraph (a) requiring the compensation of judges of courts of the United States who took office on or before June 6, 1932, to be included in gross income.

Subsec. (b), par. (9) was added by Act June 29, 1939, cited to text, and made applicable to taxable years beginning December 31, 1938, by § 215 (c) of said act.

Subsec. (d) was amended by Act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 219 (b) of said act.

Public Salary Tax Act. The Public Salary Tax Act, April 12, 1939, c. 59, Title II, §§ 201–211, 53 Stat. 575–577, in addition to amendments of paragraph (a) of this section, contained provisions of a temporary nature as follows:

"Sec. 201. Any amount of income tax (including interest, additions to tax, and additional amounts) for any taxable year beginning prior to January 1, 1938, to the extent attributable to compensation for personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing—

(a) shall not be assessed, and no proceeding in court for the collection thereof shall be begun or prosecuted (unless pursuant to an assessment made prior to January 1, 1939);

(b) if assessed after December 31, 1938, the assessment shall be abated, and any amount collected in pursuance of such assessment shall be credited or refunded in the same manner as in the case of an income tax erroneously collected; and

(c) shall, if collected on or before the date of the enactment of this Act, be credited or refunded in the same manner as in the case of an income tax erroneously collected, in the following cases—

(1) Where a claim for refund of such amount was filed before January 19, 1939, and was not disallowed on or before the date of the enactment of this Act;

(2) Where such claim was so filed but has been disallowed and the time for beginning suit with respect thereto has not expired on the date of the enactment of this Act;

(3) Where a suit for the recovery of such amount is pending on the date of the enactment of this Act; and

(4) Where a petition to the Board of Tax Appeals has been filed with respect to such amount and the Board's decision has not become final before the date of the enactment of this Act.

"Sec. 202. In the case of any taxable year beginning after December 31, 1937, and before January 1, 1939, compensation for personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing, shall not be included in the gross income of any individual under Title I of the Revenue Act of 1938 [May 28, 1938, c. 289, 52 Stat. 452.] and shall be exempt from taxation under such title, if such individual either—

(a) did not include in his return for a taxable year beginning after December 31, 1936, and before January 1, 1938, any amount as compensation for personal service as an

officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing; or

(b) did include any such amount in such return, but is entitled under section 201 of this Act to have the tax attributable thereto credited or refunded.

"Sec. 203. Any amount of income tax (including interest, additions to tax, and additional amounts) collected on, before, or after the date of the enactment of this Act for any taxable year beginning prior to January 1, 1939, to the extent attributable to compensation for personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing, shall be credited or refunded in the same manner as in the case of an income tax erroneously collected, if claim for refund with respect thereto is filed after January 18, 1939, and the Commissioner of Internal Revenue, under regulations prescribed by him with the approval of the Secretary of the Treasury, finds that disallowance of such claim would result in the application of the doctrines in the cases of *Helvering against Therrell* (303 U. S. 218) [58 S. Ct. 539, 82 L. Ed. 758, reversing 88 F. 2d 869, 1, *Helvering against Gerhardt* (304 U. S. 405), [58 S. Ct. 969, 82 L. Ed. 1427, reversing 92 F. 2d 999, *Rehearing denied* 59 S. Ct. 57, 305 U. S. 868, 83 L. Ed. 1,] and *Graves et al. against New York ex rel. O'Keefe*, decided March 27, 1939, [306 U. S. 466, 59 S. Ct. 595, 83 L. Ed. 927, 120 A. L. R. 1466, reversing 278 N. Y. 691, 16 N. E. 2d 404, affirming 253 App. Div. 91, 1 N. Y. S. 2d 195,] extending the classes of officers and employees subject to Federal taxation.

"Sec. 204. Neither section 201 nor section 203 shall apply in any case where the claim for refund, or the institution of the suit, or the filing of the petition with the Board, was, at the time filed or begun, barred by the statute of limitations properly applicable thereto.

"Sec. 205. Compensation shall not be considered as compensation within the meaning of sections 201, 202, and 203 to the extent that it is paid directly or indirectly by the United States or any agency or instrumentality thereof.

"Sec. 206. The terms used in this Act shall have the same meaning as when used in Chapter I of the Internal Revenue Code. [Section 1 et seq. of this title.]

"Sec. 207. No collection of any tax (including interest, additions to tax, and penalties) imposed by any State, Territory [Territory], possession, or local taxing authority on the compensation received before January 1, 1939, for personal service as an officer or employee of the United States or any agency or instrumentality thereof which is exempt from Federal income taxation and, if a corporate agency or instrumentality, is one (a) a majority of the stock of which is owned by or on behalf of the United States, or (b) the power to appoint or select a majority of the board of directors of which is exercisable by or on behalf of the United States, shall be made after the date of the enactment of this Act.

"Sec. 208. This title shall not apply with respect to any officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing, after the Secretary of the Treasury has determined and proclaimed that it is the policy of such State to collect from any individual any tax, interest, additions to tax, or penalties, on account of compensation received by such individual prior to January 1, 1939, for personal service as an officer or employee of the United States or any agency or instrumentality thereof. In making such determination the Secretary of the Treasury shall disregard the taxation of officers and employees of any corporate agency or instrumentality which is not exempt from Federal income taxation, or which if so exempt is one (a) a majority of the stock of which is not owned by or on behalf of the United States and (b) the power to appoint or select a majority of the board of directors of which is not exercisable by or on behalf of the United States.

"Sec. 209. In the case of the judges of the Supreme Court, and of the inferior courts of the United States created under article III of the Constitution, who took office on or before June 6, 1932, the compensation received as such shall not be subject to income tax under the Revenue Act of 1938 [May 28, 1938, c. 289, 52 Stat. 452] or any prior revenue Act.

"Sec. 210. For the purposes of this Act, the term 'officer or employee' includes a member of a legislative body and a judge or officer of a court.

"Sec. 211. If either title of this Act, or the application thereof to any person or circumstances, is held invalid, the other title of the Act shall not be affected thereby."

Derived from Act May 28, 1938, c. 289, § 22, 52 Stat. 457.

Similar provisions. Act June 22, 1936, c. 690, § 22, 49 Stat. 1657, as amended by Act Aug. 26, 1937, c. 815, Title 2, § 207 (b), 50 Stat. 826; Acts May 10, 1934, c. 277, § 22, 48 Stat. 686; June 6, 1932, c. 209, § 22, 47 Stat. 178; May 29, 1928, c. 852, § 22, 45 Stat. 797; Feb. 26, 1926, c. 27, §§ 205, 213, 233, 44 Stat. 16, 23, 41; June 2, 1924, c. 234, §§ 205, 213, 233, 43 Stat. 260, 267, 283, as amended by Feb. 2, 1925, c. 345, § 12, 43 Stat. 997; Nov. 23, 1921, c. 136, §§ 203, 213, 233, 42 Stat. 231, 237, 254, as section 213 was amended by Act Sept. 19, 1922, c. 346, § 26, 42 Stat. 856; Feb. 24, 1919, c. 18, §§ 203, 213, 233, 40 Stat. 1060, 1065, 1077; Sept. 8, 1916, c. 463, § 2 (a), 39 Stat. 1916; Oct. 3, 1913, c. 16, § II, B, 38 Stat. 167. Various exemptions from gross income were contained in Act Sept. 8, 1916, c. 463, §§ 4, 11 (b), 30, 39 Stat. 758, 767, as sections 4 and 30 were amended by Act Oct. 3, 1917, c. 63, §§ 1200, 1211, 40 Stat. 329, 336; Oct. 3, 1913, c. 16, § II, subds. B, G, 38 Stat. 167, 172.

§ 23. Deductions from gross income. In computing net income there shall be allowed as deductions:

(a) Expenses.

(1) In general. All the ordinary and necessary expenses paid or incurred during the taxable year in

carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

(2) Corporate charitable contributions. No deduction shall be allowable under paragraph (1) to a corporation for any contribution or gift which would be allowable as a deduction under subsection (q) were it not for the 5 per centum limitation therein contained and for the requirement therein that payment must be made within the taxable year.

(b) Interest. All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from the taxes imposed by this chapter.

(c) Taxes generally. Taxes paid or accrued within the taxable year, except—

(1) Federal income, war-profits, and excess-profits taxes (other than the excess-profits tax imposed by section 106 of the Revenue Act of 1935, 49 Stat. 1019, or by section 600 of this title);

(2) income, war-profits, and excess-profits taxes imposed by the authority of any foreign country or possession of the United States; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of section 131 (relating to credit for taxes of foreign countries and possessions of the United States);

(3) estate, inheritance, legacy, succession, and gift taxes; and

(4) taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

(d) Taxes of shareholder paid by corporation. The deduction for taxes allowed by subsection (c) shall be allowed to a corporation in the case of taxes imposed upon a shareholder of the corporation upon his interest as shareholder which are paid by the corporation without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes.

(e) Losses by individuals. In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction entered into for profit, though not connected with the trade or business; or

(3) of property not connected with the trade or business, if the loss arises from fires, storms, shipwreck, or other casualty, or from theft. No loss shall be allowed as a deduction under this paragraph if at the time of the filing of the return such loss has been claimed as a deduction for estate tax purposes in the estate tax return.

(f) Losses by corporations. In the case of a corporation, losses sustained during the taxable year and not compensated for by insurance or otherwise.

(g) Capital losses.

(1) Limitation. Losses from sales or exchanges of capital assets shall be allowed only to the extent provided in section 117.

(2) Securities becoming worthless. If any securities (as defined in paragraph (3) of this subsection) become worthless during the taxable year and are capital assets, the loss resulting therefrom shall, for the purposes of this chapter, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets.

(3) **Definition of securities.** As used in this subsection the term "securities" means (A) shares of stock in a corporation, and (B) rights to subscribe for or to receive such shares.

(h) **Wagering losses.** Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(i) **Basis for determining loss.** The basis for determining the amount of deduction for losses sustained, to be allowed under subsection (e) or (f), and for bad debts, to be allowed under subsection (k), shall be the adjusted basis provided in section 113 (b) for determining the loss from the sale or other disposition of property.

(j) **Loss on wash sales of stock or securities.**

For disallowance of loss deduction in the case of sales of stock or securities where within thirty days before or after the date of the sale the taxpayer has acquired substantially identical property, see section 118.

(k) **Bad debts.**

(1) **General rule.** Debts ascertained to be worthless and charged off within the taxable year (or, in the discretion of the Commissioner, a reasonable addition to a reserve for bad debts); and when satisfied that a debt is recoverable only in part, the Commissioner may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction. This paragraph shall not apply in the case of a taxpayer, other than a bank, as defined in section 104, with respect to a debt evidenced by a security as defined in paragraph (3) of this subsection.

(2) **Securities becoming worthless.** If any securities (as defined in paragraph (3) of this subsection) are ascertained to be worthless and charged off within the taxable year and are capital assets, the loss resulting therefrom shall, in the case of a taxpayer other than a bank, as defined in section 104, for the purposes of this chapter, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets.

(3) **Definition of securities.** As used in this subsection the term "securities" means bonds, debentures, notes, or certificates, or other evidences of indebtedness, issued by any corporation (including those issued by a government or political subdivision thereof), with interest coupons or in registered form.

(l) **Depreciation.** A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(m) **Depletion.** In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the Commissioner, with the approval of the Secretary. In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this subsection for subsequent taxable years shall be based upon such revised estimate. In the case of leases the deductions shall be equitably apportioned between the lessor and lessee. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions

of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

For percentage depletion allowable under this subsection see section 114 (b), (3) and (4).

(n) **Basis for depreciation and depletion.** The basis upon which depletion, exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be as provided in section 114.

(o) **Charitable and other contributions.** In the case of an individual, contributions or gifts payment of which is made within the taxable year to or for the use of:

(1) The United States, any State, Territory, or any political subdivision thereof or the District of Columbia, or any possession of the United States, for exclusively public purposes;

(2) A corporation, trust, or community chest, fund, or foundation, created or organized in the United States or in any possession thereof or under the law of the United States or of any State or Territory or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(3) the special fund for vocational rehabilitation authorized by section 12 of the World War Veterans' Act, 1924, 43 Stat. 611 (U. S. C., Title 38, § 440);

(4) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual; or

(5) a domestic fraternal society, order, or association, operating under the lodge system, but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals;

to an amount which in all the above cases combined does not exceed 15 per centum of the taxpayer's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 224 (a), 53 Stat. 880.)

For unlimited deduction if contributions and gifts exceed 90 per centum of the net income, see section 120.

(p) **Pension trusts.**

(1) **General rule.** An employer establishing or maintaining a pension trust to provide for the payment of reasonable pensions to his employees shall be allowed as a deduction (in addition to the contributions to such trust during the taxable year to cover the pension liability accruing during the year, allowed as a deduction under subsection (a) of this section) a reasonable amount transferred or paid into such trust during the taxable year in excess of such contributions, but only if such amount (1) has not theretofore been allowable as a deduction, and (2) is apportioned in equal parts over a period of ten consecutive years beginning with the year in which the transfer or payment is made.

(2) **Deductions under prior income tax acts.** Any deduction allowable under section 23 (q) of the Revenue Act of 1928, 45 Stat. 802, or the Revenue Act of 1932, 47 Stat. 182, or the Revenue Act of 1934, 48 Stat. 691, under section 23 (p) of the Revenue Act of 1936, 49 Stat. 1661, or the Revenue Act of 1938, 52 Stat. 464, which under such section was apportioned to any taxable year beginning after December 31, 1937, shall be allowed as a deduction in the years to which so apportioned to the extent allowable under

such section if it had remained in force with respect to such year.

(3) **Exemption of trusts under section 165.** The provisions of paragraphs (1) and (2) of this subsection shall be subject to the qualification that the deduction under either paragraph shall be allowable only with respect to a taxable year (whether the year of the transfer or payment or a subsequent year) of the employer ending within or with a taxable year of the trust with respect to which the trust is exempt from tax under section 165.

(q) **Charitable and other contributions by corporations.** In the case of a corporation, contributions or gifts payment of which is made within the taxable year to or for the use of a corporation, trust, or community chest, fund, or foundation, created or organized in the United States or in any possession thereof or under the law of the United States, or of any State or Territory, or of the District of Columbia, or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children (but in the case of contributions or gifts to a trust, chest, fund, or foundation, only if such contributions or gifts are to be used within the United States or any of its possessions exclusively for such purposes), no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; to an amount which does not exceed 5 per centum of the taxpayer's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 224 (b), 53 Stat. 880.)

(r) **Dividends paid by banking corporations.**

For deduction of dividends paid by certain banking corporations, see section 121.

(s) **Net operating loss deduction.** For any taxable year beginning after December 31, 1939, the net operating loss deduction computed under section 122. (53 Stat. 12, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, §§ 211 (a), 224, 53 Stat. 867, 880.)

Subsec. (o), pars. (1) and (2) were amended by Act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said Act. Prior to said amendment pars. (1) and (2) read as follows:

"(1) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

"(2) a domestic corporation, or domestic trust, or domestic community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;"

Subsec. (g) was amended by Act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said Act. Prior to said amendment subsection read as follows:

"(q) **Charitable and other contributions by corporations.** In the case of a corporation, contributions or gifts payment of which is made within the taxable year to or for the use of a domestic corporation, or domestic trust, or domestic community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children (but in the case of contributions or gifts to a trust, chest, fund, or foundation, only if such contributions or gifts are to be used within the United States exclusively for such purposes), no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; to an amount which does not exceed 5 per centum of the taxpayer's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary."

Subsec. (s) was added by Act June 29, 1939, cited to text. Derived from Act May 28, 1938, c. 289, § 23, 52 Stat. 460. Similar provisions. Acts June 22, 1936, c. 690, § 23, 49 Stat. 1658; May 10, 1924, c. 277, § 23, 48 Stat. 688, as amended by Act Aug. 30, 1935, c. 829, § 102 (c) (h), 49 Stat. 1015; June 6, 1932, c. 209, § 23, 47 Stat. 179; May 29, 1928, c. 852, § 23, 45 Stat. 799; Feb. 26, 1926, c. 27,

§§ 214, 234, 44 Stat. 26, 41; June 2, 1924, c. 234, §§ 214, 234, 43 Stat. 269, 283.

Prior provisions concerning deductions were contained in Acts Nov. 23, 1921, c. 136, §§ 214, 234, 42 Stat. 239, 254, as section 234 was amended by Act Sept. 19, 1922, c. 346, § 27, 42 Stat. 856; Feb. 24, 1919, c. 18, §§ 214, 234, 40 Stat. 1066, 1077; Sept. 8, 1916, c. 463, §§ 5, 12, 39 Stat. 759, 767, as amended by Act Oct. 3, 1917, c. 63, §§ 1201, 1207, 40 Stat. 330, 334; Oct. 3, 1913, c. 16, § II, B, G, 38 Stat. 167, 172.

§ 24. **Items not deductible—(a) General rule.** In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses;

(2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;

(4) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy; or

(5) Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this chapter.

(b) **Losses from sales or exchanges of property—**

(1) **Losses disallowed.** In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly—

(A) Between members of a family, as defined in paragraph (2) (D);

(B) Except in the case of distributions in liquidation, between an individual and a corporation more than 50 per centum in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;

(C) Except in the case of distributions in liquidation, between two corporations more than 50 per centum in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company;

(D) Between a grantor and a fiduciary of any trust;

(E) Between the fiduciary of a trust and the fiduciary of another trust, if the same person is a grantor with respect to each trust; or

(F) Between a fiduciary of a trust and a beneficiary of such trust.

(2) **Stock ownership, family, and partnership rule.**

For the purposes of determining, in applying paragraph (1), the ownership of stock—

(A) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;

(B) An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family;

(C) An individual owning (otherwise than by the application of subparagraph (B)) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner;

(D) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(E) Constructive ownership as actual ownership.—Stock constructively owned by a person by reason of the application of subparagraph (A) shall, for the purpose of applying subparagraph (A), (B), or (C), be treated as actually owned by such person, but stock constructively owned by an individual by reason of the application of subparagraph (B) or

(C) shall not be treated as owned by him for the purpose of again applying either of such subparagraphs in order to make another the constructive owner of such stock.

(c) **Unpaid expenses and interest.** In computing net income no deduction shall be allowed under section 23 (a), relating to expenses incurred, or under section 23 (b), relating to interest accrued—

(1) If such expenses or interest are not paid within the taxable year or within two and one half months after the close thereof; and

(2) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(3) If, at the close of the taxable year of the taxpayer or at any time within two and one half months thereafter, both the taxpayer and the person to whom the payment is to be made are persons between whom losses would be disallowed under section 24 (b).

(d) **Holders of life or terminable interest.** Amounts paid under the laws of any State, Territory, District of Columbia, possession of the United States, or foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time, nor by any deduction allowed by this chapter (except the deductions provided for in subsections (l) and (m) of section 23) for the purpose of computing the net income of an estate or trust but not allowed under the laws of such State, Territory, District of Columbia, possession of the United States, or foreign country for the purpose of computing the income to which such holder is entitled.

(e) **Tax withheld on tax-free covenant bonds.**

For nondeductibility of tax withheld on tax-free covenant bonds, see section 143 (a) (3).

(53 Stat. 16.)

Derived from Act May 28, 1938, c. 289, § 24, 52 Stat. 464.

Similar provisions. Act June 22, 1936, c. 690, § 24, 49 Stat. 1662, as amended by Act Aug. 26, 1937, c. 815, Title III, § 301, 50 Stat. 827; Acts May 10, 1934, c. 277, § 24, 48 Stat. 691; June 6, 1932, c. 209, § 24, 47 Stat. 183; May 29, 1928, c. 852, § 24, 45 Stat. 802; Feb. 26, 1926, c. 27, § 215, 235, 44 Stat. 28, 43; June 2, 1924, c. 234, § 215, 235, 43 Stat. 271, 285; Nov. 23, 1921, c. 136, § 215, 235, 42 Stat. 242, 257; Feb. 24, 1919, c. 18, § 215, 235, 40 Stat. 1069, 1080.

§ 25. Credits of individual against net income—(a) Credits for normal tax only. There shall be allowed for the purpose of the normal tax, but not for the surtax, the following credits against the net income:

(1) **Interest on United States obligations.** The amount received as interest upon obligations of the United States which is included in gross income under section 22.

(2) **Interest on obligations of instrumentalities of the United States.** The amount received as interest on obligations of a corporation organized under Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax.

(3) **Earned income credit.** 10 per centum of the amount of the earned net income, but not in excess of 10 per centum of the amount of the net income.

(4) **Earned income definitions.** For the purposes of this section—

(A) "Earned income" means wages, salaries, professional fees, and other amounts received as compensation for personal services actually rendered, but does not include any amount not included in gross income, nor that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services

actually rendered. In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income producing factors, a reasonable allowance as compensation for the personal services actually rendered by the taxpayer, not in excess of 20 per centum of his share of the net profits of such trade or business, shall be considered as earned income.

(B) "Earned income deductions" means such deductions as are allowed by section 23 for the purpose of computing net income, and are properly allocable to or chargeable against earned income.

(C) "Earned net income" means the excess of the amount of the earned income over the sum of the earned income deductions. If the taxpayer's net income is not more than \$3,000, his entire net income shall be considered to be earned net income, and if his net income is more than \$3,000, his earned net income shall not be considered to be less than \$3,000. In no case shall the earned net income be considered to be more than \$14,000.

(b) **Credits for both normal tax and surtax.** There shall be allowed for the purposes of the normal tax and the surtax the following credits against net income:

(1) **Personal exemption.** In the case of a single person or a married person not living with husband or wife, a personal exemption of \$1,000; or in the case of the head of a family or a married person living with husband or wife, a personal exemption of \$2,500. A husband and wife living together shall receive but one personal exemption. The amount of such personal exemption shall be \$2,500. If such husband and wife make separate returns, the personal exemption may be taken by either or divided between them.

(2) **Credit for dependents.** \$400 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.

(3) **Change of status.** If the status of the taxpayer, insofar as it affects the personal exemption or credit for dependents, changes during the taxable year, the personal exemption and credit shall be apportioned, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, in accordance with the number of months before and after such change. For the purpose of such apportionment a fractional part of a month shall be disregarded unless it amounts to more than half a month in which case it shall be considered as a month. (53 Stat. 17.)

Derived from Act May 28, 1938, c. 289, § 25, 52 Stat. 466. **Similar provisions.** Acts June 22, 1936, c. 690, § 25, 49 Stat. 1662; May 10, 1934, c. 277, § 25, 48 Stat. 692; June 6, 1932, c. 209, § 25, 47 Stat. 184; May 29, 1928, c. 852, § 25, 45 Stat. 802, 804; Feb. 26, 1926, c. 27, § 209, 216, 44 Stat. 20, 29; June 2, 1924, c. 234, § 209, 216, 43 Stat. 263, 272; Mar. 4, 1923, c. 280, § 2, 42 Stat. 1507; Nov. 23, 1921, c. 136, § 216, 42 Stat. 242, as amended by Act Sept. 19, 1922, c. 346, § 27, 42 Stat. 856; Feb. 24, 1919, c. 18, § 216, 40 Stat. 1069; Oct. 3, 1917, c. 63, § 3, 40 Stat. 301; Sept. 8, 1916, c. 463, § 5, 7, 39 Stat. 759, 761, as amended by Act Oct. 3, 1917, c. 63, § 1201, 1203, 40 Stat. 330, 331; Oct. 3, 1913, c. 16, § 11, C, 38 Stat. 168.

§ 26. Credits of corporations. In the case of a corporation the following credits shall be allowed to the extent provided in the various sections imposing tax—

(a) **Interest on obligations of the United States and its instrumentalities.** The amount received as interest upon obligations of the United States or of corporations organized under Act of Congress which is allowed to an individual as a credit for purposes of normal tax by section 25 (a) (1) or (2).

(b) **Dividends received.** 85 per centum of the amount received as dividends from a domestic corporation which is subject to taxation under this chapter, but not in excess of 85 per centum of the adjusted net income. The credit allowed by this subsection shall not be allowed in respect of dividends received from a corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., Title 15, c. 4), or

from a corporation which under section 251 is taxable only on its gross income from sources within the United States by reason of its receiving a large percentage of its gross income from sources within a possession of the United States.

(c) **Net operating loss of preceding year—(1) Amount of credit.** The amount of the net operating loss (as defined in paragraph (2)) of the corporation for the preceding taxable year (if beginning after December 31, 1937), but not in excess of the adjusted net income for the taxable year.

(2) **Definition.** As used in this section the term "net operating loss" means the excess of the deductions allowed by this section over the gross income, with the following exceptions and limitations—

(A) The deduction for depletion shall not exceed the amount which would be allowable if computed without reference to discovery value or to percentage depletion under section 114 (b) (2), (3), or (4);

(B) There shall be included in computing gross income the amount of interest received which is wholly exempt from the taxes imposed by this chapter, decreased by the amount of interest paid or accrued which is not allowed as a deduction by section 23 (b), relating to interest on indebtedness incurred or continued to purchase or carry certain tax-exempt obligations.

In the case of a taxable year beginning after December 31, 1937, and before January 1, 1939, the term "net operating loss" means net operating loss as defined in section 26 (c) of the Revenue Act of 1938, 52 Stat. 467. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 211 (j), 53 Stat. 869.)

(d) **Bank affiliates.** In the case of a holding company affiliate (as defined in section 2 of the Banking Act of 1933), the amount of the earnings or profits which the Board of Governors of the Federal Reserve System certifies to the Commissioner has been devoted by such affiliate during the taxable year to the acquisition of readily marketable assets other than bank stock in compliance with section 5144 of the Revised Statutes. The aggregate of the credits allowable under this subsection for all taxable years beginning after December 31, 1935, shall not exceed the amount required to be devoted under such section 5144 to such purposes, and the amount of the credit for any taxable year shall not exceed the adjusted net income for such year.

(e) **Dividends paid credit.**

For corporation dividends paid credit, see section 27.

(f) **Consent dividends credit.**

For corporation consent dividends credit, see section 28.

(53 Stat. 18, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 211 (j), 53 Stat. 869.)

Derived from Act May 28, 1938, c. 289, § 26, 52 Stat. 467. Subsec. (c), par. (2) was amended by Act June 29, 1939, cited to text.

Similar provisions. Acts June 22, 1936, c. 690, § 26, 49 Stat. 1664; May 10, 1934, c. 277, § 26, 48 Stat. 693; June 6, 1932, c. 209, § 26, 47 Stat. 185; May 29, 1928, c. 852, § 26, 45 Stat. 503; Feb. 26, 1926, c. 27, § 236, 44 Stat. 43; June 2, 1924, c. 234, § 236, 43 Stat. 285; Nov. 23, 1921, c. 136, § 236, 42 Stat. 257; Feb. 24, 1919, c. 18, § 236, 40 Stat. 1080.

§ 27. **Corporation dividends paid credit—(a) Definition in general.** As used in this chapter with respect to any taxable year the term "dividends paid credit" means the sum of:

(1) The basic surtax credit for such year, computed as provided in subsection (b);

(2) The dividend carry-over to such year, computed as provided in subsection (c);

(3) The amount, if any, by which any deficit in the accumulated earnings and profits, as of the close of the preceding taxable year (whether beginning on, before, or after January 1, 1939), exceeds the amount of the credit provided in section 26 (c) (relating to net operating losses), for such preceding taxable year (if beginning after December 31, 1937); and

(4) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind, if such amounts are reasonable with respect to the size and terms of such indebtedness. As used in this paragraph the term "indebtedness" means only an indebtedness of the corporation existing at the close of business on December 31, 1937, and evidenced by a bond, note,

debenture, certificate of indebtedness, mortgage, or deed of trust, issued by the corporation and in existence at the close of business on December 31, 1937, or by a bill of exchange accepted by the corporation prior to, and in existence at, the close of business on such date. Where the indebtedness is for a principal sum, with interest, no credit shall be allowed under this paragraph for amounts used or set aside to pay such interest. A renewal (however evidenced) of an indebtedness shall be considered an indebtedness. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 222 (a), 53 Stat. 879.)

(b) **Basic surtax credit.** As used in this chapter the term "basic surtax credit" means the sum of:

(1) The dividends paid during the taxable year, increased by the consent dividends credit provided in section 28, and reduced by the amount of the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations;

(2) The net operating loss credit provided in section 26 (c) (1);

(3) The bank affiliate credit provided in section 26 (d).

The aggregate of the amounts under paragraphs (2) and (3) shall not exceed the adjusted net income for the taxable year.

(c) **Dividend carry-over.** There shall be computed with respect to each taxable year of a corporation a dividend carry-over to such year from the two preceding taxable years, which shall consist of the sum of—

(1) The amount of the basic surtax credit for the second preceding taxable year, reduced by the adjusted net income for such year, and further reduced by the amount, if any, by which the adjusted net income for the first preceding taxable year exceeds the sum of—

(A) The basic surtax credit for such year; and

(B) The excess, if any, of the basic surtax credit for the third preceding taxable year over the adjusted net income for such year; and

(2) The amount, if any, by which the basic surtax credit for the first preceding taxable year exceeds the adjusted net income for such year.

In the case of a preceding taxable year, referred to in this subsection, which begins in 1937, the adjusted net income shall be the adjusted net income as defined in section 14 of the Revenue Act of 1936, and the basic surtax credit shall be only the dividends paid credit computed under the Revenue Act of 1936 without the benefit of the dividend carry-over provided in section 27 (b) of such Act. In the case of a preceding taxable year, referred to in this subsection, which begins in 1938, the adjusted net income shall be the adjusted net income as defined in section 13 (a) of the Revenue Act of 1938, 52 Stat. 455, and the basic surtax credit shall be the basic surtax credit as defined in section 27 of the Revenue Act of 1938, 52 Stat. 468.

(d) **Dividends in kind.** If a dividend is paid in property other than money (including stock of the corporation if held by the corporation as an investment) the amount with respect thereto which shall be used in computing the basic surtax credit shall be the adjusted basis of the property in the hands of the corporation at the time of the payment, or the fair market value of the property at the time of the payment, whichever is the lower.

(e) **Dividends in obligations of the corporation.** If a dividend is paid in obligations of the corporation, the amount with respect thereto which shall be used in computing the basic surtax credit shall be the face value of the obligations, or their fair market value at the time of the payment, whichever is the lower. If the fair market value of any such dividend paid in any taxable year of the corporation beginning after December 31, 1935, is lower than the face value, then when the obligation is redeemed by the corporation the excess of the amount for which redeemed over the fair market value at the time of the dividend payment (to the extent not allowable as a deduction in computing net income for any taxable year) shall

be treated as a dividend paid in the taxable year in which the redemption occurs.

(f) **Taxable stock dividends.** In case of a stock dividend or stock right which is a taxable dividend in the hands of shareholders under section 115 (f), the amount with respect thereto which shall be used in computing the basic surtax credit shall be the fair market value of the stock or the stock right at the time of the payment.

(g) **Distributions in liquidation.** In the case of amounts distributed in liquidation the part of such distribution which is properly chargeable to the earnings or profits accumulated after February 28, 1913, shall, for the purposes of computing the basic surtax credit under this section, be treated as a taxable dividend paid.

(h) **Preferential dividends.** The amount of any distribution (although each portion thereof is received by a shareholder as a taxable dividend), not made in connection with a consent distribution (as defined in section 28 (a) (4)), shall not be considered as dividends paid for the purpose of computing the basic surtax credit, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference.

For a distribution made in connection with a consent distribution, see section 28.

(i) **Nontaxable distributions.** If any part of a distribution (including stock dividends and stock rights) is not a taxable dividend in the hands of such of the shareholders as are subject to taxation under this chapter for the period in which the distribution is made, such part shall not be included in computing the basic surtax credit. (53 Stat. 19, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 222, 53 Stat. 879.)

Act June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 222 (c) and (d), 53 Stat. 879, provided as follows: "(c) Section 27 (a) (4) of the Revenue Act of 1938 (relating to corporation credit for amounts used or set aside to pay indebtedness) is amended by inserting at the end thereof the following new sentence: 'A renewal (however evidenced) of an indebtedness shall be considered an indebtedness.'

"(d) The amendment made by subsection (c) shall be applicable to taxable years beginning after December 31, 1937."

Subsec. (a), par. (4), last sentence was added by Act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938 by § 222 (b) of said act.

Derived from Act May 28, 1938, c. 289, § 27, 52 Stat. 468. Similar provisions. Act June 22, 1936, c. 690, § 27, 49 Stat. 1667.

§ 28. **Consent dividends credit — (a) Definitions.** As used in this section—

(1) **Consent stock.** The term "consent stock" means the class or classes of stock entitled, after the payment of preferred dividends (as defined in paragraph (2)), to a share in the distribution (other than in complete or partial liquidation) within the taxable year of all the remaining earnings or profits, which share constitutes the same proportion of such distribution regardless of the amount of such distribution.

(2) **Preferred dividends.** The term "preferred dividends" means a distribution (other than in complete or partial liquidation), limited in amount, which must be made on any class of stock before a further distribution (other than in complete or partial liquidation) of earnings or profits may be made within the taxable year.

(3) **Consent dividends day.** The term "consent dividends day" means the last day of the taxable year of the corporation, unless during the last month of such year there have occurred one or more days on which was payable a partial distribution (as defined in paragraph (5)), in which case it means the last of such days.

(4) **Consent distribution.** The term "consent distribution" means the distribution which would have been made if on the consent dividends day (as defined in paragraph (3)) there had actually been distributed in cash and received by each shareholder making a

consent filed by the corporation under subsection (d), the specific amount stated in such consent.

(5) **Partial distribution.** The term "partial distribution" means such part of an actual distribution, payable during the last month of the taxable year of the corporation, as constitutes a distribution on the whole or any part of the consent stock (as defined in paragraph (1)), which part of the distribution, if considered by itself and not in connection with a consent distribution (as defined in paragraph (4)), would be a preferential distribution, as defined in paragraph (6).

(6) **Preferential distribution.** The term "preferential distribution" means a distribution which is not pro rata, or which is with preference to any share of stock as compared with other shares of the same class, or to any class of consent stock as compared with any other class of consent stock.

(b) **Corporations not entitled to credit.** A corporation shall not be entitled to a consent dividends credit with respect to any taxable year—

(1) Unless, at the close of such year, all preferred dividends (for the taxable year and, if cumulative, for prior taxable years) have been paid; or

(2) If, at any time during such year, the corporation has taken any steps in, or in pursuance of a plan of, complete or partial liquidation of all or any part of the consent stock.

(c) **Allowance of credit.** There shall be allowed to the corporation, as a part of its basic surtax credit for the taxable year, a consent dividends credit equal to such portion of the total sum agreed to be included in the gross income of shareholders by their consents filed under subsection (d) as it would have been entitled to include in computing its basic surtax credit if actual distribution of an amount equal to such total sum had been made in cash and each shareholder making such a consent had received, on the consent dividends day, the amount specified in the consent.

(d) **Shareholders' consents.** The corporation shall not be entitled to a consent dividends credit with respect to any taxable year—

(1) Unless it files with its return for such year (in accordance with regulations prescribed by the Commissioner with the approval of the Secretary) signed consents made under oath by persons who were shareholders, on the last day of the taxable year of the corporation, of any class of consent stock; and

(2) Unless in each such consent the shareholder agrees that he will include as a taxable dividend, in his return for the taxable year in which or with which the taxable year of the corporation ends, a specific amount; and

(3) Unless the consents filed are made by such of the shareholders and the amount specified in each consent is such, that the consent distribution would not have been a preferential distribution—

(A) If there was no partial distribution during the last month of the taxable year of the corporation, or

(B) If there was such a partial distribution, then when considered in connection with such partial distribution;

and

(4) Unless in each consent made by a shareholder who is taxable with respect to a dividend only if received from sources within the United States, such shareholder agrees that the specific amount stated in the consent shall be considered as a dividend received by him from sources within the United States; and

(5) Unless each consent filed is accompanied by cash, or such other medium of payment as the Commissioner may by regulations authorize, in an amount equal to the amount that would be required by section 143 (b) or 144 to be deducted and withheld by the corporation if the amount specified in the consent had been, on the last day of the taxable year of the corporation, paid to the shareholder in cash as a dividend. The amount accompanying the consent shall be credited against the tax imposed by section 211 (a) or 231 (a) upon the shareholder.

(e) **Consent distribution as part of entire distribution.** If during the last month of the taxable year with respect to which shareholders' consents are filed by the corporation under subsection (d) there is made a partial distribution, then, for the purposes of this chapter, such partial distribution and the consent distribution shall be considered as having been made in connection with each other and each shall be considered together with the other as one entire distribution.

(f) **Taxability of amounts specified in consents.** The total amount specified in a consent filed under subsection (d) shall be included as a taxable dividend in the gross income of the shareholder making such consent, and, if the shareholder is taxable with respect to a dividend only if received from sources within the United States, shall be included in the computation of his tax as a dividend received from sources within the United States; regardless of—

(1) Whether he actually so includes it in his return; and

(2) Whether the distribution by the corporation of an amount equal to the total sum included in all the consents filed, had actual distribution been made, would have been in whole or in part a taxable dividend; and

(3) Whether the corporation is entitled to any consent dividends credit by reason of the filing of such consents, or to a credit less than the total sum included in all the consents filed.

(g) **Corporate shareholders.** If the shareholder who makes the consent is a corporation, the amount specified in the consent shall be considered as part of its earnings or profits for the taxable year, and shall be included in the computation of its accumulated earnings and profits.

(h) **Basis of stock in hands of shareholders.** The amount specified in a consent made under subsection (d) shall, for the purpose of adjusting the basis of the consent stock with respect to which the consent was given, be treated as having been reinvested by the shareholder as a contribution to the capital of the corporation; but only in an amount which bears the same ratio to the consent dividends credit of the corporation as the amount of such shareholder's consent stock bears to the total amount of consent stock with respect to which consents are made.

(i) **Effect on capital account of corporation.** The amount of the consent dividends credit allowed under subsection (c) shall be considered as paid in surplus or as a contribution to the capital of the corporation, and the accumulated earnings and profits as of the close of the taxable year shall be correspondingly reduced.

(j) **Amounts not included in shareholder's return.** The failure of a shareholder of consent stock to include in his gross income for the proper taxable year the amount specified in the consent made by him and filed by the corporation, shall have the same effect with respect to the deficiency resulting therefrom, as is provided in section 272 (f) with respect to a deficiency resulting from a mathematical error appearing on the face of the return. (53 Stat. 21.)

Derived from Act May 28, 1938, c. 289, § 28, 52 Stat. 470.

PART III.—CREDITS AGAINST TAX

§ 31. **Taxes of foreign countries and possessions of United States.** The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax, to the extent provided in section 131. (53 Stat. 24.)

Derived from Act May 28, 1938, c. 289, § 31, 52 Stat. 472. **Similar provisions.** Acts June 22, 1936, c. 690, § 31, 49 Stat. 1666; May 10, 1934, c. 277, § 31, 48 Stat. 693; June 6, 1932, c. 209, § 31, 47 Stat. 185; May 29, 1928, c. 852, § 32, 45 Stat. 804; Feb. 26, 1926, c. 27, §§ 222, 238, 44 Stat. 36, 44; June 2, 1924, c. 234, §§ 222, 238, 43 Stat. 279, 286; Nov. 23, 1921, c. 136, §§ 222, 238, 42 Stat. 249, 258; Feb. 24, 1919, c. 18, §§ 222, 238, 40 Stat. 1073, 1080.

§ 32. **Taxes withheld at source.** The amount of tax withheld at the source under section 143 or 144 shall be allowed as a credit against the tax. (53 Stat. 24.)

Derived from Act May 28, 1938, c. 289, § 32, 52 Stat. 472. **Similar provisions.** Acts June 22, 1936, c. 690, § 32, 49 Stat. 1666; May 10, 1934, c. 277, § 32, 48 Stat. 693; June 6, 1932, c. 209, § 32, 47 Stat. 185; May 29, 1928, c. 852, § 33, 45 Stat. 804.

§ 33. Credit for overpayments.

For credit against the tax of overpayments of taxes imposed by this chapter for other taxable years, see section 322. (53 Stat. 24.)

Derived from Act May 28, 1938, c. 289, § 33, 52 Stat. 473. **Similar provisions.** Acts June 22, 1936, c. 690, § 33, 49 Stat. 1666; May 10, 1934, c. 277, § 33, 48 Stat. 693.

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

§ 41. **General rule.** The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 48 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

For use of inventories, see section 22 (c).

(53 Stat. 24.)

Derived from Act May 28, 1938, c. 289, § 41, 52 Stat. 473. **Similar provisions.** Acts June 22, 1936, c. 690, § 41, 49 Stat. 1666; May 10, 1934, c. 277, § 41, 48 Stat. 694; June 6, 1932, c. 209, § 41, 47 Stat. 185; May 29, 1928, c. 852, § 41, 45 Stat. 805; Feb. 26, 1926, c. 27, §§ 212, 232, 44 Stat. 23, 41; June 2, 1924, c. 234, §§ 212, 231, 43 Stat. 267, 283; Nov. 23, 1921, c. 136, §§ 212, 232, 42 Stat. 237, 254; Feb. 24, 1919, c. 18, §§ 212, 232, 40 Stat. 1064, 1077.

§ 42. **Period in which items of gross income included.** The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period. In the case of the death of a taxpayer there shall be included in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect of such period or a prior period. (53 Stat. 24.)

Derived from Act May 28, 1938, c. 289, § 42, 52 Stat. 473. **Similar provisions.** Acts June 22, 1936, c. 690, § 42, 49 Stat. 1666; May 10, 1934, c. 277, § 42, 48 Stat. 694; June 6, 1932, c. 209, § 42, 47 Stat. 185; May 29, 1928, c. 852, § 42, 45 Stat. 805; Feb. 26, 1926, c. 27, § 213, 44 Stat. 23; June 2, 1924, c. 234, § 213, 43 Stat. 267, as amended by Act Feb. 26, 1925, c. 345, § 12, 43 Stat. 997; Nov. 23, 1921, c. 136, § 213, 42 Stat. 237; Feb. 24, 1919, c. 18, § 213, 40 Stat. 1065.

§ 43. Period for which deductions and credits taken.

The deductions and credits (other than the corporation dividends paid credit provided in section 27) provided for in this chapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred", dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer there shall be allowed as deductions and credits for the taxable period in which falls the date of his death, amounts accrued up to the date of his death (except deductions under section 23 (o)) if not otherwise properly allowable in respect of such period or a prior period. (53 Stat. 24.)

Derived from Act May 28, 1938, c. 289, § 43, 52 Stat. 473. **Similar provisions.** Acts June 22, 1936, c. 690, § 43, 49 Stat. 1666; May 10, 1934, c. 277, § 43, 48 Stat. 694; June 6, 1932, c. 209, § 43, 47 Stat. 185; May 29, 1928, c. 852, § 43, 45 Stat. 805; Feb. 26, 1926, c. 27, § 200, 44 Stat. 10; June 2, 1924, c. 234, § 200, 43 Stat. 254.

§ 44. Installment basis—(a) Dealers in personal property. Under regulations prescribed by the Commissioner with the approval of the Secretary, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

(b) Sales of realty and casual sales of personality.¹

In the case (1) of a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year), for a price exceeding \$1,000, or (2) of a sale or other disposition of real property, if in either case the initial payments do not exceed 30 per centum of the selling price (or, in case the sale or other disposition was in a taxable year beginning prior to January 1, 1934, the percentage of the selling price prescribed in the law applicable to such year), the income may, under regulations prescribed by the Commissioner with the approval of the Secretary, be returned on the basis and in the manner above prescribed in this section. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

(c) Change from accrual to installment basis. If a taxpayer entitled to the benefits of subsection (a) elects for any taxable year to report his net income on the installment basis, then in computing his income for the year of change or any subsequent year, amounts actually received during any such year on account of sales or other dispositions of property made in any prior year shall not be excluded.

(d) Gain or loss upon disposition of installment obligations. If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and (1) in the case of satisfaction at other than face value or a sale or exchange—the amount realized, or (2) in case of a distribution, transmission, or disposition otherwise than by sale or exchange—the fair market value of the obligation at the time of such distribution, transmission, or disposition. Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received. The basis of the obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full. This subsection shall not apply to the transmission at death of installment obligations if there is filed with the Commissioner, at such time as he may by regulation prescribe, a bond in such amount and with such sureties as he may deem necessary, conditioned upon the return as income, by the person receiving any payment on such obligations, of the same proportion of such payment as would be returnable as income by the decedent if he had lived and had received such payment. If an installment obligation is distributed by one corporation to another corporation in the course of a liquidation, and under section 112 (b) (6) no gain or loss with respect to the receipt of such obligation is recognized in the case of the recipient corporation, then no gain or loss with respect to the distribution of such obligation shall be recognized in the case of the distributing corporation. (53 Stat. 24.)

¹ So in original. Probably should read "personalty."

Derived from Act May 28, 1938, c. 289, § 44, 52 Stat. 473. Similar provisions. Acts June 22, 1936, c. 690, § 44, 49 Stat. 1667; May 10, 1934, c. 277, § 44, 48 Stat. 694; June 6, 1932, c. 209, § 44, 47 Stat. 185; May 29, 1928, c. 852, § 44, 45 Stat. 806; Feb. 26, 1926, c. 27, § 212, 44 Stat. 23.

§ 45. Allocation of income and deductions. In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not

organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Commissioner is authorized to distribute, apportion, or allocate gross income or deductions between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses. (53 Stat. 25.)

Derived from Act May 28, 1938, c. 289, § 45, 52 Stat. 474. Similar provisions. Acts June 22, 1936, c. 690, § 45, 49 Stat. 1667; May 10, 1934, c. 277, § 45, 48 Stat. 695; June 6, 1932, c. 209, § 45, 47 Stat. 186; May 29, 1928, c. 852, § 45, 45 Stat. 806; Feb. 26, 1926, c. 27, § 240, 44 Stat. 46; June 2, 1924, c. 234, § 240, 43 Stat. 278.

§ 46. Change of accounting period. If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the Commissioner, be computed on the basis of such new accounting period, subject to the provisions of section 47. (53 Stat. 26.)

Derived from Act May 28, 1938, c. 289, § 46, 52 Stat. 474. Similar provisions. Acts June 22, 1936, c. 690, § 46, 49 Stat. 1668; May 10, 1934, c. 277, § 46, 48 Stat. 695; June 6, 1932, c. 209, § 46, 47 Stat. 186; May 29, 1928, c. 852, § 46, 45 Stat. 806; Feb. 26, 1926, c. 27, § 212, 44 Stat. 23; June 2, 1924, c. 234, § 212, 43 Stat. 267; Nov. 23, 1921, c. 136, § 212, 42 Stat. 237; Feb. 24, 1919, c. 18, § 212, 40 Stat. 1064.

§ 47. Returns for a period of less than twelve months—(a) Returns for short period resulting from change of accounting period. If a taxpayer, with the approval of the Commissioner, changes the basis of computing net income from fiscal year to calendar year a separate return shall be made for the period between the close of the last fiscal year for which return was made and the following December 31. If the change is from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the fiscal year. If the change is from one fiscal year to another fiscal year a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year.

(b) Income computed on basis of short period. Where a separate return is made under subsection (a) on account of a change in the accounting period, and in all other cases where a separate return is required or permitted, by regulations prescribed by the Commissioner with the approval of the Secretary, to be made for a fractional part of a year, then the income shall be computed on the basis of the period for which separate return is made.

(c) Income placed on annual basis. If a separate return is made (except returns of the income of a corporation) under subsection (a) on account of a change in the accounting period, the net income, computed on the basis of the period for which separate return is made, shall be placed on an annual basis by multiplying the amount thereof by twelve and dividing by the number of months included in the period for which the separate return is made. The tax shall be such part of the tax computed on such annual basis as the number of months in such period is of twelve months.

(d) Earned income. The Commissioner with the approval of the Secretary shall by regulations prescribe the method of applying the provisions of subsections (b) and (c) (relating to computing income on the basis of a short period, and placing such income on an annual basis) to cases where the taxpayer makes a separate return under subsection (a) on account of a change in the accounting period, and it appears that for the period for which the return is so made he has received earned income.

(e) Reduction of credits against net income. In the case of a return made for a fractional part of a year, except a return made under subsection (a), on account of a change in the accounting period, the personal exemption and credit for dependents shall

be reduced respectively to amounts which bear the same ratio to the full credits provided as the number of months in the period for which return is made bears to twelve months.

(f) Closing of taxable year in case of jeopardy

For closing of taxable year in case of jeopardy, see section 146.

(53 Stat. 26.)

Derived from Act May 28, 1938, c. 289, § 47, 52 Stat. 475. **Similar provisions.** Acts June 22, 1936, c. 690, § 47, 49 Stat. 1668; May 10, 1934, c. 277, § 47, 48 Stat. 695; June 6, 1932, c. 209, § 47, 47 Stat. 187; May 29, 1928, c. 852, § 47, 45 Stat. 806; Feb. 26, 1926, c. 27, §§ 226, 239, 44 Stat. 38, 45; June 2, 1924, c. 234, §§ 226, 239, 43 Stat. 281, 287; Nov. 23, 1921, c. 136, §§ 226, 239, 42 Stat. 251, 259; Feb. 24, 1919, c. 18, §§ 226, 239, 40 Stat. 1075, 1081; Sept. 8, 1916, c. 463, § 13, 39 Stat. 770, as amended by Act Oct. 3, 1917, c. 63, § 1208, 40 Stat. 335; Oct. 3, 1913, c. 16, § 11, G. 38 Stat. 175.

§ 48. Definitions. When used in this chapter—

(a) Taxable year. "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this Part. "Taxable year" includes, in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the Commissioner with the approval of the Secretary, the period for which such return is made.

(b) Fiscal year. "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.

(c) "Paid or incurred", "paid or accrued". The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this Part.

(d) Trade or business. The term "trade or business" includes the performance of the functions of a public office. (53 Stat. 26.)

Derived from Act May 28, 1938, c. 289, § 48, 52 Stat. 475. **Similar provisions.** Acts June 22, 1936, c. 690, § 48, 49 Stat. 1669, as amended by Act Aug. 26, 1937, c. 815, Title VI, § 602, 50 Stat. 831; May 10, 1934, c. 277, § 48, 48 Stat. 696; June 6, 1932, c. 209, § 46, 47 Stat. 187; May 29, 1928, c. 852, § 48, 45 Stat. 807; Feb. 26, 1926, c. 27, § 200, 44 Stat. 10; June 2, 1924, c. 234, § 200, 43 Stat. 254; Nov. 23, 1921, c. 136, § 200, 42 Stat. 227; Feb. 24, 1919, c. 18, § 200, 40 Stat. 1058.

PART V.—RETURNS AND PAYMENT OF TAX

§ 51. Individual returns—(a) Requirement. The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe—

(1) Every individual who is single or who is married but not living with husband or wife, if—

(A) Having a net income for the taxable year of \$1,000 or over; or

(B) Having a gross income for the taxable year of \$5,000 or over, regardless of the amount of the net income.

(2) Every individual who is married and living with husband or wife, if no joint return is made under subsection (b) and if—

(A) Such individual has for the taxable year a net income of \$2,500 or over or a gross income of \$5,000 or over (regardless of the amount of the net income), and the other spouse has no gross income; or

(B) Such individual and his spouse each has for the taxable year a gross income (regardless of the amount of the net income) and the aggregate net income of the two is \$2,500 or over; or

(C) Such individual and his spouse each has for the taxable year a gross income (regardless of the amount of the net income) and the aggregate gross income is \$5,000 or over.

(b) Husband and wife. In the case of a husband and wife living together the income of each (even though one has no gross income) may be included in a single return made by them jointly, in which case

the tax shall be computed on the aggregate income, and the liability with respect to the tax shall be joint and several. No joint return may be made if either the husband or wife is a nonresident alien.

(c) Persons under disability. If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(d) Signature presumed correct. The fact that an individual's name is signed to a filed return shall be prima facie evidence for all purposes that the return was actually signed by him.

(e) Fiduciaries.

For returns to be made by fiduciaries, see section 142.

(53 Stat. 27.)

Derived from Act May 28, 1938, c. 289, § 51, 52 Stat. 476.

Similar provisions. Acts June 22, 1936, c. 690, § 51, 49 Stat. 1670; May 10, 1934, c. 277, § 51, 48 Stat. 697; June 6, 1932, c. 209, § 51, 47 Stat. 188; May 29, 1928, c. 852, § 51, 45 Stat. 507; Feb. 26, 1926, c. 27, § 223, 44 Stat. 37; June 2, 1924, c. 234, § 223, 43 Stat. 280; Nov. 23, 1921, c. 136, § 223, 42 Stat. 250; Feb. 24, 1919, c. 18, § 223, 40 Stat. 1074; Oct. 3, 1917, c. 63, § 3, 40 Stat. 301; Sept. 8, 1916, c. 463, §§ 8, 19, 39 Stat. 776, section 8 of said act amended by Act Oct. 3, 1917, c. 63, § 1204, 40 Stat. 331; Oct. 3, 1913, c. 16, § 11, D. 38 Stat. 168.

§ 52. Corporation returns—(a) Requirement. Every corporation subject to taxation under this chapter shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe. The return shall be sworn to by the president, vice president, or other principal officer and by the treasurer, assistant treasurer, or chief accounting officer. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control

(b) Cross reference.

For provisions as to consolidated returns in the case of railroad corporations, see section 141.

(53 Stat. 27.)

Derived from Act May 28, 1938, c. 289, § 52, 52 Stat. 476. **Similar provisions.** Acts June 22, 1936, c. 690, § 52, 49 Stat. 1670; May 10, 1934, c. 277, § 52, 48 Stat. 697; June 6, 1932, c. 209, § 52, 47 Stat. 188; May 29, 1928, c. 852, § 52, 45 Stat. 808; Feb. 26, 1926, c. 27, § 239, 44 Stat. 45; June 2, 1924, c. 234, § 239, 43 Stat. 287; Nov. 23, 1921, c. 136, § 239, 42 Stat. 259; Feb. 24, 1919, c. 18, § 239, 40 Stat. 1081; Sept. 8, 1916, c. 463, § 13, 39 Stat. 770, as amended by Act Oct. 3, 1917, c. 63, § 1208, 40 Stat. 335; Oct. 3, 1913, c. 16, § 11, G. 38 Stat. 175.

§ 53. Time and place for filing returns—(a) Time for filing—(1) General rule. Returns made on the basis of the calendar year shall be made on or before the 15th day of March following the close of the calendar year. Returns made on the basis of a fiscal year shall be made on or before the 15th day of the third month following the close of the fiscal year.

(2) **Extension of time.** The Commissioner may grant a reasonable extension of time for filing returns, under such rules and regulations as he shall prescribe with the approval of the Secretary. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

(b) To whom return made—(1) Individuals. Returns (other than corporation returns) shall be made to the collector for the district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in the United States, then to the collector at Baltimore, Maryland.

(2) **Corporations.** Returns of corporations shall be made to the collector of the district in which is located the principal place of business or principal office or

agency of the corporation, or, if it has no principal place of business or principal office or agency in the United States, then to the collector at Baltimore, Maryland. (53 Stat. 28.)

Derived from Act May 28, 1938, c. 289, § 53, 52 Stat. 477.
Similar provisions. Acts June 22, 1936, c. 690, § 53, 49 Stat. 1670; May 10, 1934, c. 277, § 53, 48 Stat. 697; June 6, 1932, c. 209, § 53, 47 Stat. 188; May 29, 1928, c. 852, § 53, 45 Stat. 808; Feb. 26, 1926, c. 27, §§ 227, 241, 44 Stat. 39, 46; June 2, 1924, c. 234, §§ 227, 241, 43 Stat. 281, 288; Nov. 23, 1921, c. 136, §§ 227, 241, 42 Stat. 251, 260; Feb. 24, 1919, c. 18, §§ 227, 241, 40 Stat. 1075, 1082; Sept. 8, 1916, c. 463, §§ 8, 13, 39 Stat. 761, 770, as amended by Act Oct. 3, 1917, r. 63, § 1204, 40 Stat. 331; Oct. 3, 1913, c. 16, §§ 11, D, G, 38 Stat. 168, 174.

§ 54. Records and special returns—(a) By taxpayer. Every person liable to any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) To determine liability to tax. Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the Commissioner deems sufficient to show whether or not such person is liable to tax under this chapter.

(c) Information at the source.

For requirement of statements and returns by one person to assist in determining the tax liability of another person, see sections 147 to 150.

(d) Copies of returns. If any person, required by law or regulations made pursuant to law to file a copy of any income return for any taxable year, fails to file such copy at the time required, there shall be due and assessed against such person \$5 in the case of an individual return or \$10 in the case of a fiduciary, partnership, or corporation return, and the collector with whom the return is filed shall prepare such copy. Such amount shall be collected and paid, without interest, in the same manner as the amount of tax due in excess of that shown by the taxpayer upon a return in the case of a mathematical error appearing on the face of the return. Copies of returns filed or prepared pursuant to this subsection shall remain on file for a period of not less than two years from the date they are required to be filed, and may be destroyed at any time thereafter under the direction of the Commissioner.

(e) Foreign personal holding companies.

For information returns by officers, directors, and large shareholders, with respect to foreign personal holding companies, see sections 338, 339, and 340.

For information returns by attorneys, accountants, and so forth, as to formation, and so forth, of foreign corporations, see section 3604.

(53 Stat. 28.)

Derived from Act May 28, 1938, c. 289, § 54, 52 Stat. 477.

Similar provisions. Acts June 22, 1936, c. 690, § 54, 49 Stat. 1671, as amended by Act Aug. 26, 1937, c. 815, Title II, § 207 (c), 50 Stat. 826; May 10, 1934, c. 277, § 54, 48 Stat. 698, as amended by Act Apr. 10, 1936, c. 189, 49 Stat. 1199; June 6, 1932, c. 209, § 54, 47 Stat. 189; May 29, 1928, c. 852, § 54, 45 Stat. 808; Feb. 26, 1926, c. 27, § 1102, 44 Stat. 112; June 2, 1924, c. 234, § 1002, 43 Stat. 339; Oct. 3, 1917, c. 63, § 1001, 40 Stat. 325; Sept. 8, 1916, c. 463, § 409, 39 Stat. 793; Oct. 22, 1914, c. 331, § 23, 38 Stat. 764.

§ 55. Publicity of returns—(a) Public record and inspection—(1) Returns made under this chapter upon which the tax has been determined by the Commissioner shall constitute public records; but, except as hereinafter provided in this section, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President.

(2) And all returns made under this chapter, subchapters A, B, and D of chapter 2, subchapter B of chapter 3, chapters 4, 7, 12, and 21, subchapter A of chapter 29, and subchapters A and B of chapter 30, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(3) Whenever a return is open to the inspection of any person a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Commissioner with the approval of the Secretary. The Commissioner may prescribe a reasonable fee for furnishing such copy.

(b) Inspection by states—(1) State officers. The proper officers of any State may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and in such manner as the Secretary may prescribe.

(2) State bodies or commissions. All income returns filed under this chapter (or copies thereof, if so prescribed by regulations made under this subsection), shall be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in this paragraph. The inspection shall be permitted only upon written request of the governor of such State, designating the representative of such official, body, or commission to make the inspection on behalf of such official, body, or commission. The inspection shall be made in such manner, and at such times and places, as shall be prescribed by regulations made by the Commissioner with the approval of the Secretary. Any information thus secured by any official, body, or commission of any State may be used only for the administration of the tax laws of such State, except that upon written request of the Governor of such State any such information may be furnished to any official, body, or commission of any political subdivision of such State, lawfully charged with the administration of the tax laws of such political subdivision, but may be furnished only for the purpose of, and may be used only for, the administration of such tax laws.

(c) Inspection by shareholders. All bona fide shareholders of record owning 1 per centum or more of the outstanding stock of any corporation shall, upon making request of the Commissioner, be allowed to examine the annual income returns of such corporation and of its subsidiaries.

(d) Inspection by committees of congress—(1) Committees on ways and means and finance—(A) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(B) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(C) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(2) Joint committee on internal revenue taxation. The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be.

(e) Inspection in collector's office of list of taxpayers. The Commissioner shall as soon as practi-

cable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the collector in each internal revenue district and in such other places as he may determine, lists containing the name and the post-office address of each person making an income-tax return in such district.

(f) **Penalties for disclosing information.**—(1) **Federal employees and other persons.** It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.

(2) **State employees.** Any officer, employee, or agent of any State or political subdivision, who divulges (except as authorized in paragraph 2 of subsection (b), or when called upon to testify in any judicial or administrative proceeding to which the State or political subdivision, or such State or local official, body, or commission, as such, is a party) any information acquired by him through an inspection permitted him or another under paragraph 2 of subsection (b) shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or both.

(3) **Shareholders.** Any shareholder who pursuant to the provisions of this section is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both.

(4) **Cross reference.**

For penalties for disclosing operations, style of work, or apparatus of any manufacturer or producer, see section 4047. (53 Stat. 29.)

Subsection (e) was derived from Act Feb. 26, 1926, c. 27, § 257 (e), 44 Stat. 52.

Subsection (f) was derived from Acts May 28, 1938, c. 289, § 55 (b), (2), 52 Stat. 478; June 22, 1936, c. 690, § 55 (a), 49 Stat. 1671; Feb. 26, 1926, c. 27, §§ 257 (d), 1115, 44 Stat. 51, 117; Feb. 24, 1919, c. 18, § 1317, 40 Stat. 1146; R. S. § 3167 which was revised from Act June 30, 1864, c. 173, § 38, 13 Stat. 238.

Subsection (a) was derived from Acts May 28, 1938, c. 289, § 55 (a), 52 Stat. 478; June 22, 1936, c. 690, § 55 (a), 49 Stat. 1671; Feb. 26, 1926, c. 27, § 257 (a), 44 Stat. 51.

Subsection (b) was derived from Acts May 28, 1938, c. 289, § 55 (b), (1) (2), 52 Stat. 478; Feb. 26, 1926, c. 27, § 257 (c), 44 Stat. 51.

Subsection (c) was derived from Act Feb. 26, 1926, c. 27, § 257 (d), 44 Stat. 51.

Subsection (d) was derived from Act Feb. 26, 1926, c. 27, §§ 257 (b), 1203 (d), 44 Stat. 51, 128.

Similar provisions. Acts May 10, 1934, c. 277, 55 (b), 48 Stat. 698, as amended by Act Apr. 19, 1935, c. 74, 49 Stat. 158; June 6, 1932, c. 209, § 55, 47 Stat. 189; June 2, 1924, c. 234, §§ 257, 1018, 43 Stat. 293, 345; Nov. 23, 1921, c. 136, § 257, 42 Stat. 270; Feb. 24, 1919, c. 18, § 257, 40 Stat. 1086; Sept. 8, 1916, c. 463, § 14, 39 Stat. 772; Oct. 3, 1913, c. 16, § 11, G. 38 Stat. 177.

§ 56. **Payment of tax.**—(a) **Time of payment.** The total amount of tax imposed by this chapter shall be paid on the fifteenth day of March following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the third month following the close of the fiscal year.

(b) **Installment payments.** The taxpayer may elect to pay the tax in four equal installments, in which case the first installment shall be paid on the date prescribed for the payment of the tax by the taxpayer, the second installment shall be paid on the fifteenth day of the third month, the third installment on the fifteenth day of the sixth month, and the fourth installment on the fifteenth day of the ninth month, after such date. If any installment is not paid on or before the date fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

(c) **Extension of time for payment.**—(1) **General rule.** At the request of the taxpayer, the Commissioner may extend the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(2) **Liquidation of personal holding companies.** At the request of the taxpayer, the Commissioner may (under regulations prescribed by the Commissioner with the approval of the Secretary) extend (for a period not to exceed five years from the date prescribed for the payment of the tax) the time for the payment of such portion of the amount determined as the tax by the taxpayer as is attributable to the short-term or long-term capital gain derived by the taxpayer from the receipt by him of property other than money upon the complete liquidation (as defined in section 115 (c)) of a corporation. This paragraph shall apply only if the corporation, for its taxable year preceding the year in which occurred the complete liquidation (or the first of the series of distributions referred to in such section), was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company. An extension under this paragraph shall be granted only if it is shown to the satisfaction of the Commissioner that the failure to grant it will result in undue hardship to the taxpayer. If an extension is granted the amount with respect to which the extension is granted shall be paid on or before the date of the expiration of the extension. If an extension is granted under this paragraph the Commissioner may require the taxpayer to furnish a bond in such amount, not exceeding double the amount with respect to which the extension is granted, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the amount with respect to which the extension is granted in accordance with the terms of the extension.

(d) **Voluntary advance payment.** A tax imposed by this chapter, or any installment thereof, may be paid, at the election of the taxpayer, prior to the date prescribed for its payment.

(e) **Advance payment in case of jeopardy.**

For advance payment in case of jeopardy, see section 146.

(f) **Tax withheld at source.**

For requirement of withholding tax at the source in the case of nonresident aliens and foreign corporations, and in the case of so-called "tax-free covenant bonds", see sections 143 and 144.

(g) **Fractional parts of cent.** In the payment of any tax under this chapter a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(h) **Receipts.** Every collector to whom any payment of any income tax is made shall upon request give to the person making such payment a full written or printed receipt therefor. (53 Stat. 31.)

Derived from Act May 28, 1938, c. 289, § 56, 52 Stat. 478. **Similar provisions.** Acts June 22, 1936, c. 690, § 56, 49 Stat. 1672; May 10, 1934, c. 277, § 56, 48 Stat. 698; June 6, 1932, c. 209, § 56, 47 Stat. 189; May 29, 1928, c. 852, § 56, 45 Stat. 809; Feb. 26, 1926, c. 27, § 270, 44 Stat. 54; June 2, 1924, c. 234, § 270, 43 Stat. 295; Nov. 23, 1921, c. 136, § 250, 42 Stat. 264; Feb. 24, 1919, c. 18, § 250, 40 Stat. 1082; Oct. 3, 1917, c. 63, § 1009, 40 Stat. 326; Sept. 8, 1916, c. 463, §§ 9, 14, 39 Stat. 763, 772, as section 9 was amended by Act Oct. 3, 1917, c. 63, § 1205, 40 Stat. 352; Oct. 3, 1913, c. 16, § 11, subd. E, G, 38 Stat. 169, 176.

Provisions similar to subsection (h) were contained in Acts Nov. 23, 1921, c. 136, § 251, 42 Stat. 267; Feb. 24, 1919, c. 18, § 251, 40 Stat. 1084; Sept. 8, 1916, c. 463, § 17, 39 Stat. 775; Oct. 3, 1913, c. 16, § 11, J. 38 Stat. 179; Aug. 27, 1894, c. 349, § 37, 28 Stat. 560.

§ 57. Examination of return and determination of tax. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax. (53 Stat. 32.)

Derived from Act May 28, 1938, c. 289, § 57, 52 Stat. 479. **Similar provisions.** Acts June 22, 1936, c. 690, § 57, 49 Stat. 1673; May 10, 1934, c. 277, § 57, 48 Stat. 699; June 6, 1932, c. 209, § 57, 47 Stat. 190; May 29, 1928, c. 852, § 57, 45 Stat. 810; Feb. 26, 1926, c. 27, § 271, 44 Stat. 55; June 2, 1924, c. 234, § 271, 43 Stat. 296.

§ 58. Additions to tax and penalties.

(a) For additions to the tax in case of negligence or fraud in the nonpayment of tax or failure to file return therefor, see Supplement M.

(b) For criminal penalties for nonpayment of tax or failure to file return therefor, see section 145.

(53 Stat. 32.)

Derived from Act May 28, 1938, c. 289, § 58, 52 Stat. 480. **Similar provisions.** Acts June 22, 1936, c. 690, § 58, 49 Stat. 1673; May 10, 1934, c. 277, § 58, 48 Stat. 699.

§ 59. Administrative proceedings.

For administrative proceedings in respect of the nonpayment or overpayment of a tax imposed by this chapter, see as follows:

(a) Supplement L, relating to assessment and collection of deficiencies.

(b) Supplement M, relating to interest and additions to tax.

(c) Supplement N, relating to claims against transferees and fiduciaries.

(d) Supplement O, relating to overpayments.

(53 Stat. 32.)

Derived from Act May 28, 1938, c. 289, § 59, 52 Stat. 480. **Similar provisions.** Acts June 22, 1936, c. 690, § 59, 49 Stat. 1673; May 10, 1934, c. 277, § 59, 48 Stat. 699.

§ 60. Cross references.

For general provisions relating to—

(a) Information and returns, see chapter 34.

(b) Assessment, see chapter 35.

(c) Collection, see chapter 36.

(53 Stat. 32.)

PART VI.—MISCELLANEOUS PROVISIONS

§ 61. Laws made applicable. All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this chapter. (53 Stat. 32.)

Derived from Act May 28, 1938, c. 289, § 61, 52 Stat. 480.

Similar provisions. Acts June 22, 1936, c. 690, § 61, 49 Stat. 1673; May 10, 1934, c. 277, § 61, 48 Stat. 699; June 6, 1932, c. 209, § 61, 47 Stat. 190; May 29, 1928, c. 852, § 61, 45 Stat. 810; Feb. 26, 1926, c. 27, § 1100, 44 Stat. 111; June 2, 1924, c. 234, § 1000, 43 Stat. 339; Nov. 23, 1921, c. 136, § 1300, 42 Stat. 308; Feb. 24, 1919, c. 18, § 1305, 40 Stat. 1142; Oct. 3, 1917, c. 63, § 1001, 40 Stat. 325; Sept. 8, 1916, c. 463, § 22, 211, 409, 39 Stat. 776, 780, 792; Oct. 22, 1914, c. 331, § 23, 38 Stat. 764; Oct. 3, 1913, c. 16, § 11L, 38 Stat. 179; June 13, 1898, c. 448, § 31, 30 Stat. 448.

§ 62. Rules and regulations. The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter. (53 Stat. 32.)

Derived from Act May 28, 1938, c. 289, § 62, 52 Stat. 480.

Similar provisions. Acts June 22, 1936, c. 690, § 62, 49 Stat. 1673; May 10, 1934, c. 277, § 62, 48 Stat. 700; June 6, 1932, c. 209, § 62, 47 Stat. 191; May 29, 1928, c. 852, § 62, 45 Stat. 810; Feb. 26, 1926, c. 27, § 1101, 44 Stat. 111; June 2, 1924, c. 234, § 1001, 43 Stat. 339; Nov. 23, 1921, c. 136, § 1303, 42 Stat. 309; Feb. 24, 1919, c. 18, § 1309, 40 Stat. 1143; Oct. 3, 1917, c. 63, § 1005, 40 Stat. 326; Sept. 8, 1916, c. 463, § 212, 39 Stat. 780.

§ 63. Publication of statistics. The Commissioner, with the approval of the Secretary, shall prepare and publish annually statistics reasonably available with respect to the operation of the income, war-profits and excess-profits tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable. (53 Stat. 32.)

Derived from Act Feb. 26, 1926, c. 27, § 258, 44 Stat. 52. **Similar provisions.** Acts June 2, 1924, c. 234, § 258, 43 Stat. 293; Nov. 23, 1921, c. 136, § 258, 42 Stat. 270; Feb. 24, 1919, c. 18, § 258, 40 Stat. 1087; Sept. 8, 1916, c. 463, § 21, 39 Stat. 771.

§ 64. Definitions

For definitions of a general character, see section 3797. (53 Stat. 32.)

SUBCHAPTER C.—SUPPLEMENTAL PROVISIONS

SUPPLEMENT A.—RATES OF TAX

[Supplementary to Subchapter B, Part I]

§ 101. Exemptions from tax on corporations. The following organizations shall be exempt from taxation under this chapter—

(1) Labor, agricultural, or horticultural organizations;

(2) Mutual savings banks not having a capital stock represented by shares;

(3) Fraternal beneficiary societies, orders, or associations, (A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and (B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

(4) Domestic building and loan associations substantially all the business of which is confined to making loans to members; and cooperative banks without capital stock organized and operated for mutual purposes and without profit;

(5) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(7) Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes;

(9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder;

(10) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 per centum or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses;

(11) Farmers' or other mutual hail, cyclone, casualty, or fire insurance companies or associations (including interinsurers and reciprocal underwriters) the income of which is used or held for the purpose of paying losses or expenses;

(12) Farmers', fruit growers', or like associations organized and operated on a cooperative basis (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such

supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this paragraph;

(13) Corporations organized by an association exempt under the provisions of paragraph (12), or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose;

(14) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this chapter;

(15) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes;

(16) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (A) no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (B) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(17) Teachers' retirement fund associations of a purely local character, if (A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and (B) the income consists solely of amounts received from public taxation, amounts received from assessments upon the teaching salaries of members, and income in respect of investments;

(18) Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the com-

mon benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro-rata shares, whether distributed or not, of the net income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(19) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (A) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (B) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual. (53 Stat. 33, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 217, 53 Stat. 876.)

Par. (19) was added by Act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 217 (b) of said act.

Derived from Act May 28, 1938, c. 289, § 101, 52 Stat. 480. Similar provisions. Acts June 22, 1936, c. 690, § 101, 49 Stat. 1673; May 10, 1934, c. 277, § 101, 48 Stat. 700; June 6, 1932, c. 209, § 103, 47 Stat. 193; May 29, 1928, c. 852, § 103, 45 Stat. 812; Feb. 26, 1926, c. 27, § 231, 44 Stat. 39; June 2, 1924, c. 234, § 231, 43 Stat. 282; Nov. 23, 1921, c. 136, § 231, 42 Stat. 253; Feb. 24, 1919, c. 18, § 231, 40 Stat. 1076; Sept. 8, 1916, c. 463, § 11, 39 Stat. 766; Oct. 3, 1913, c. 16, § 11, G. 38 Stat. 172.

Services performed in employ of exempt organizations, inclusion in definition of employment under Title II of the Social Security Act, see section 409 of Title 42, The Public Health and Welfare.

§ 102. Surtax on corporations improperly accumulating surplus—(a) Imposition of tax. There shall be levied, collected, and paid for each taxable year (in addition to other taxes imposed by this chapter) upon the net income of every corporation (other than a personal holding company as defined in section 501 or a foreign personal holding company as defined in Supplement P) if such corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its shareholders or the shareholders of any other corporation, through the medium of permitting earnings or profits to accumulate instead of being divided or distributed, a surtax equal to the sum of the following:

25 per centum of the amount of the undistributed section 102 net income not in excess of \$100,000, plus

35 per centum of the undistributed section 102 net income in excess of \$100,000.

(b) **Prima facie evidence.** The fact that any corporation is a mere holding or investment company shall be prima facie evidence of a purpose to avoid surtax upon shareholders.

(c) **Evidence determinative of purpose.** The fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid surtax upon shareholders unless the corporation by the clear preponderance of the evidence shall prove to the contrary.

(d) **Definitions.** As used in this chapter—

(1) **Section 102 net income.** The term "section 102 net income" means the net income, computed without the net operating loss deduction provided in section 23(s), minus the sum of—

(A) **Taxes.** Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year, to the extent not allowed as a deduction by section 23, but not including the tax imposed by this section or a corresponding section of a prior income-tax law.

(B) **Disallowed charitable, etc., contributions.** Contributions or gifts payment of which is made within the taxable year, not otherwise allowed as a deduction, to or for the use of donees described in section 23 (o), for the purposes therein specified.

(C) **Disallowed losses.** Losses from sales or exchanges of capital assets which are disallowed as a deduction by section 117 (d).

(2) **Undistributed section 102 net income.** The term "undistributed section 102 net income" means

the section 102 net income minus the basic surtax credit provided in section 27 (b), but the computation of such credit under section 27 (b) (1) shall be made without its reduction by the amount of the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 211 (f), 53 Stat. 868.)

(e) Tax on personal holding companies.

For surtax on personal holding companies, see section 500. (53 Stat. 35, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 211 (f), 53 Stat. 868.)

Subsec. (d), par. (1) was amended by Act June 29, 1939, cited to text.

Derived from Act May 28, 1938, c. 289, § 102, 52 Stat. 483.

Similar provisions. Acts June 22, 1936, c. 690, § 102, 49 Stat. 1676, as amended by Act Aug. 26, 1937, c. 815, Titles I, VI, §§ 2, 601, 50 Stat. 815, 830; May 10, 1934, c. 277, § 102, 48 Stat. 702; June 6, 1932, c. 209, § 104, 47 Stat. 195, as amended by Act June 16, 1933, c. 90, Title 2, § 214, 48 Stat. 207; May 29, 1928, c. 852, § 104, 45 Stat. 814; Feb. 26, 1926, c. 27, § 220, 44 Stat. 34; June 2, 1924, c. 234, § 220, 43 Stat. 277; Nov. 23, 1921, c. 136, § 220, 42 Stat. 247; Feb. 24, 1919, c. 18, § 220, 40 Stat. 1072.

§ 103. Rates of tax on citizens and corporations of certain foreign countries. Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by sections 11, 12, 13, 14, 201 (b), 204 (a), 207, 211 (a), 231 (a), and 362 shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be doubled in the case of each citizen and corporation of such foreign country; but the tax at such doubled rate shall be considered as imposed by sections 11, 12, 13, 14, 201 (b), 204 (a), 207, 211 (a), 231 (a), or 362, as the case may be. In no case shall this section operate to increase the taxes imposed by such sections (computed without regard to this section) to an amount in excess of 80 per centum of the net income of the taxpayer. Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under the preceding provisions of this section have been modified so that discriminatory and extraterritorial taxes applicable to citizens and corporations of the United States have been removed, he shall so proclaim, and the provisions of this section providing for doubled rates of tax shall not apply to any citizen or corporation of such foreign country with respect to any taxable year beginning after such proclamation is made. (53 Stat. 36.)

Derived from Act May 28, 1938, c. 289, § 103, 52 Stat. 483.

Similar provisions. Acts June 22, 1936, c. 690, § 103, 49 Stat. 1677; May 10, 1934, c. 277, § 103, 48 Stat. 703.

§ 104. Banks and trust companies—(a) Definition. As used in this section the term "bank" means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia), of any State, or of any Territory, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under section 11 (k) of the Federal Reserve Act, 38 Stat. 262 (U. S. C., Title 12, § 248k), as amended, and which is subject by law to supervision and examination by State, Territorial or Federal authority having supervision over banking institutions.

(b) Rate of tax. Banks shall be subject to tax under section 13 or section 14 (b). (53 Stat. 36, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 202, 53 Stat. 865.)

Subsec. (b) was amended by Act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsection (b) read as follows:

"(b) Rate of tax. Banks shall be taxable under section 14 (d)."

Derived from Act May 28, 1938, c. 289, § 104, 52 Stat. 484.

Similar provisions. Act June 22, 1936, c. 690, § 104, 49 Stat. 1677.

§ 105. Sale of oil or gas properties. In the case of a bona fide sale of any oil or gas property, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration or discovery work done by the taxpayer, the portion of the tax imposed by section 12 attributable to such sale shall not exceed 30 per centum of the selling price of such property or interest. (53 Stat. 36.)

Derived from Act May 28, 1938, c. 289, § 105, 52 Stat. 484. **Similar provisions.** Acts June 22, 1936, c. 690, § 105, 49 Stat. 1678; June 6, 1932, c. 209, § 102, 47 Stat. 192; May 29, 1928, c. 852, § 102, 45 Stat. 812; Feb. 26, 1926, c. 27, § 211, 44 Stat. 21; June 2, 1924, c. 234, § 211, 43 Stat. 255.

§ 106. Claims against United States involving acquisition of property. In the case of amounts (other than interest) received by a taxpayer from the United States with respect to a claim against the United States involving the acquisition of property and remaining unpaid for more than fifteen years, the portion of the tax imposed by section 12 attributable to such receipt shall not exceed 30 per centum of the amount (other than interest) so received. (53 Stat. 36.)

Derived from Act May 28, 1938, c. 289, § 106, 52 Stat. 484.

§ 107. Compensation for services rendered for a period of five years or more. In the case of compensation (a) received, for personal services rendered by an individual in his individual capacity, or as a member of a partnership, and covering a period of five calendar years or more from the beginning to the completion of such services, (b) paid (or not less than 95 per centum of which is paid) only on completion of such services, and (c) required to be included in gross income of such individual for any taxable year beginning after December 31, 1938, the tax attributable to such compensation shall not be greater than the aggregate of the taxes attributable to such compensation had it been received in equal portions in each of the years included in such period. (Added June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 220 (a), 53 Stat. 878.)

Section was made applicable to taxable years beginning after December 31, 1938, by § 220 (b) of Act June 29, 1939, cited to text.

SUPPLEMENT B.—COMPUTATION OF NET INCOME

[Supplementary to Subchapter B, Part II]

§ 111. Determination of amount of, and recognition of, gain or loss—(a) Computation of gain or loss. The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 113 (b) for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

(b) Amount realized. The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

(c) Recognition of gain or loss. In the case of a sale or exchange, the extent to which the gain or loss determined under this section shall be recognized for the purposes of this chapter, shall be determined under the provisions of section 112.

(d) Installment sales. Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received. (53 Stat. 37.)

Derived from Act May 28, 1938, c. 289, § 111, 52 Stat. 484. **Similar provisions.** Acts June 22, 1936, c. 690, § 111, 49 Stat. 1678; May 10, 1934, c. 277, § 111, 48 Stat. 703; June 6, 1932, c. 209, § 111, 47 Stat. 195; May 29, 1928, c. 852, § 111, 45 Stat. 815; Feb. 26, 1926, c. 27, § 202, 44 Stat. 11; June 2, 1924, c. 234, § 202, 43 Stat. 255; Nov. 23, 1921, c. 136, § 202, 42 Stat. 229, as amended by Act Mar. 4, 1923, c. 294, §§ 1, 2, 42 Stat. 1560; Feb. 24, 1919, c. 18, § 202, 40 Stat. 1060.

Recognition of gain or loss on transfer of obsolete vessels under Merchant Marine Act, section 1101 et seq. of Title 46, see section 1160 (e) of Title 46, Shipping.

§ 112. Recognition of gain or loss—(a) General rule. Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 111, shall be recognized, except as hereinafter provided in this section.

(b) Exchanges solely in kind—(1) Property held for productive use or investment. No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

(2) Stock for stock of same corporation. No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(3) Stock for stock on reorganization. No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(4) Same—Gain of corporation. No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(5) Transfer to corporation controlled by transferor. No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange. Where the transferee assumes a liability of a transferor, or where the property of a transferor is transferred subject to a liability, then for the purpose only of determining whether the amount of stock or securities received by each of the transferors is in the proportion required by this paragraph, the amount of such liability (if under subsection (k) it is not to be considered as "other property or money") shall be considered as stock or securities received by such transferor.

(6) Property received by corporation on complete liquidation of another. No gain or loss shall be recognized upon the receipt by a corporation of property distributed in complete liquidation of another corporation. For the purposes of this paragraph a distribution shall be considered to be in complete liquidation only if—

(A) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 per centum of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), and was at no time on or after the date of the adoption of the plan of liquidation and until the receipt of the property the owner of a greater percentage of any class of stock than the percentage of such class owned at the time of the receipt of the property; and

(B) no distribution under the liquidation was made before the first day of the first taxable year of the corporation beginning after December 31, 1935; and either

(C) the distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the share-

holders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock, shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(D) such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within three years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under subparagraph (A) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year the Commissioner may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such three-year period, or if the taxpayer does not continue qualified under subparagraph (A) until the completion of such transfer, the assessment and collection of all income, war-profits, and excess-profits taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this paragraph shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for the purposes of this paragraph a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (i) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, upon an exchange described in paragraph (4) of this subsection, and (ii) the complete cancellation or redemption under the plan, as a result of exchanges described in paragraph (3) of this subsection, of the shares not owned by the taxpayer.

(8)¹ Exchanges and distributions in obedience to orders of Securities and Exchange Commission. In the case of any exchange or distribution described in section 371, no gain or loss shall be recognized to the extent specified in such section with respect to such exchange or distribution. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 213 (c), 53 Stat. 870.)

(c) Gain from exchanges not solely in kind. (1) If an exchange would be within the provisions of subsection (b) (1), (2), (3), or (5) of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(2) If a distribution made in pursuance of a plan of reorganization is within the provisions of paragraph (1) of this subsection but has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under paragraph (1) shall be taxed as a gain from the exchange of property.

(d) **Same—Gain of corporation.** If an exchange would be within the provisions of subsection (b) (4) of this section if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then—

(1) If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(2) If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(e) **Loss from exchanges not solely in kind.** If an exchange would be within the provisions of subsection (b) (1) to (5), inclusive, of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(f) **Involuntary conversions.** If property (as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the Commissioner with the approval of the Secretary, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

(g) **Definition of reorganization.** As used in this section and section 113—

(1) The term "reorganization" means (A) a statutory merger or consolidation, or (B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of another corporation, or (C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of substantially all the properties of another corporation, but in determining whether the exchange is solely for voting stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded, or (D) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its shareholders or both are in control of the corporation to which the assets are transferred, or (E) a recapitalization, or (F) a mere change in identity, form, or place of organization, however effected.

(2) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 213 (b), 53 Stat. 870.)

(h) **Definition of control.** As used in this section the term "control" means the ownership of stock possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and at least 80 per centum of the total number of shares of all other classes of stock of the corporation.

(i) **Foreign corporations.** In determining the extent to which gain shall be recognized in the case of

any of the exchanges described in subsection (b) (3), (4), (5), or (6), or described in so much of subsection (c) as refers to subsection (b) (3) or (5), or described in subsection (d), a foreign corporation shall not be considered as a corporation unless, prior to such exchange, it has been established to the satisfaction of the Commissioner that such exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

(j) **Installment obligations.**

For nonrecognition of gain or loss in the case of installment obligations, see section 44 (d).

(k) **Assumption of liability not recognized.** Where upon an exchange the taxpayer receives as part of the consideration property which would be permitted by subsection (b) (4) or (5) of this section to be received without the recognition of gain if it were the sole consideration, and as part of the consideration another party to the exchange assumes a liability of the taxpayer or acquires from the taxpayer property subject to a liability, such assumption or acquisition shall not be considered as "other property or money" received by the taxpayer within the meaning of subsection (c), (d), or (e) of this section and shall not prevent the exchange from being within the provisions of subsection (b) (4) or (5); except that if, taking into consideration the nature of the liability and the circumstances in the light of which the arrangement for the assumption or acquisition was made, it appears that the principal purpose of the taxpayer with respect to the assumption or acquisition was a purpose to avoid Federal income tax on the exchange, or, if not such purpose, was not a bona fide business purpose, such assumption or acquisition (in the amount of the liability) shall, for the purposes of this section, be considered as money received by the taxpayer upon the exchange. In any suit or proceeding where the burden is on the taxpayer to prove that such assumption or acquisition is not to be considered as money received by the taxpayer, such burden shall not be considered as sustained unless the taxpayer sustains such burden by the clear preponderance of the evidence. (53 Stat. 37, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 213 (a)–(c), 53 Stat. 870.)

¹ So in original. Probably should read "(7)".

Act Aug. 10, 1939, c. 666, Title IX, § 910, 53 Stat. 1402, provided as follows: "(a) The provisions of section 213(f) of the Revenue Act of 1939 [set out in note under this section] shall apply without regard to the exception therein provided, if (1) the taxpayer in the determination referred to in such exception is a corporation, (2) such determination is by a decision of the Board of Tax Appeals or of a court, (3) under the law applicable to the taxable year in which the exchange occurred, the basis of the property, acquired upon the exchange from the taxpayer by the party assuming a liability of the taxpayer or acquiring the property subject to a liability, is the cost to such party of the property acquired upon the exchange, and (4) the taxpayer in pursuance of the plan of reorganization effected a complete liquidation immediately subsequent to the exchange.

"(b) No overpayment determined to have been made for any taxable year by reason of the provisions of paragraph (a) of this section shall be refunded or credited unless a claim for refund is filed within the period of limitations otherwise provided by law for filing a claim for refund for such taxable year, or within one year from the date of enactment of the Revenue Act of 1939 [approved June 29, 1939, 10 p. m. E. S. T.], whichever of such periods expires the later. No interest shall be allowed or paid on the amount of any overpayment refunded or credited by reason of the provisions of this section."

Act June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 213 (f)–(h), 53 Stat. 871, provided as follows: "(f) ASSUMPTION OF LIABILITY NOT RECOGNIZED UNDER PRIOR ACTS.—

"(1) Where upon an exchange occurring in a taxable year ending after December 31, 1923, and beginning before January 1, 1939, the taxpayer received as part of the consideration property which would be permitted by subsection (b) (4) or (5) of section 112 of the Revenue Act of 1938, or the corresponding provisions of the Revenue Act of 1924 or subsequent revenue Acts, to be received without the recognition of gain if it were the sole consideration, and as part of the consideration another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition shall not be considered as 'other property or money' received by the taxpayer within the meaning of subsection (c), (d), or (e) of section 112 of the Revenue Act of 1938, or the corresponding provisions of the Revenue Act of 1924 or subsequent revenue Acts, and shall not prevent the exchange from being within the provisions of subsection (b)

(4) or (5) of section 112 of the Revenue Act of 1938, or the corresponding provisions of the Revenue Act of 1924 or subsequent revenue Acts; except that if, in the determination of the tax liability of such taxpayer for the taxable year in which the exchange occurred, by a decision of the Board of Tax Appeals or of a court which became final before the ninetieth day after the date of enactment of the Revenue Act of 1939, or by a closing agreement, gain was recognized to such taxpayer by reason of such assumption or acquisition of property, then for the purposes of section 112 of the Revenue Act of 1938, and corresponding provisions of the Revenue Act of 1924 or subsequent revenue Acts, such assumption or acquisition (in the amount of the liability considered in computing the gain) shall be considered as money received by the taxpayer upon the exchange.

"(2) Paragraph (1) shall be effective with respect to the Revenue Act of 1924 and subsequent revenue Acts as of the date of enactment of each such Act.

"(g) DEFINITION OF REORGANIZATION UNDER PRIOR ACTS.—
 "(1) Section 112 (g) (1) of the Revenue Acts of 1938, 1936, and 1934 are amended to read as follows:

"(1) The term 'reorganization' means (A) a statutory merger or consolidation, or (B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of substantially all the properties of another corporation, but in determining whether the exchange is solely for voting stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded; or the acquisition by one corporation in exchange solely for all or a part of its voting stock of at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of another corporation, or (C) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its shareholders or both are in control of the corporation to which the assets are transferred, or (D) a recapitalization, or (E) a mere change in identity, form, or place of organization, however effected."

"(2) The amendments made by paragraph (1) to the respective Acts amended shall be effective as to each of such Acts as of the date of enactment of such Act.

"(h) SUBSTANTIALLY PROPORTIONATE INTERESTS UNDER PRIOR ACTS.—

"(1) Section 112 (b) (5) of the Revenue Acts of 1938, 1936, 1934, 1932, and 1928, and section 203 (b) (4) of the Revenue Acts of 1926 and 1924 are amended by inserting at the end thereof the following: 'Where the transferee assumes a liability of a transferor, or where the property of a transferor is transferred subject to a liability, then for the purpose only of determining whether the amount of stock or securities received by each of the transferors is in the proportion required by this paragraph, the amount of such liability (if under section 213 of the Revenue Act of 1939 it is not considered as "other property or money") shall be considered as stock or securities received by such transferor. If, as the result of a determination of the tax liability of the taxpayer for the taxable year in which the exchange occurred, by a decision of the Board of Tax Appeals or of a court which became final before the ninetieth day after the date of the enactment of the Revenue Act of 1939, or by a closing agreement, the treatment of the amount of such liability was different from the treatment which would result from the application of the preceding sentence, such sentence shall not apply and the result of such determination shall be deemed proper.'

"(2) The amendments made by paragraph (1) to the respective Acts amended shall be effective as to each of such Acts as of the date of enactment of such Act."

Subsec. (b), par. (5), last sentence was added by Act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938 by § 213 (e) of said act.

Subsec. (g), par. (1) was amended by Act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938 by § 213 (e) of said act.

Subsec. (k) was added by Act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938 by § 213 (e) of said act.

Derived from Act May 28, 1938, c. 289, § 112, 52 Stat. 485.

Similar provisions. Acts June 22, 1936, c. 690, § 112, 49 Stat. 1678; May 10, 1934, c. 277, § 112, 48 Stat. 704, as amended by Act Aug. 30, 1935, c. 829, § 110, 49 Stat. 1020; June 6, 1932, c. 209, § 112, 47 Stat. 196; May 29, 1928, c. 852, § 112, 45 Stat. 816; Feb. 26, 1926, c. 27, § 203, 44 Stat. 12; June 2, 1924, c. 234, § 203, 43 Stat. 256; Nov. 23, 1921, c. 136, § 202, 42 Stat. 229, as amended by Act Mar. 4, 1923, c. 294, §§ 1, 2, 42 Stat. 1560; Feb. 24, 1919, c. 18, § 202, 40 Stat. 1060.

§ 113. Adjusted basis for determining gain or loss—

(a) **Basis (unadjusted) of property.** The basis of property shall be the cost of such property; except that—

(1) **Inventory value.** If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

(2) **Gifts after December 31, 1920.** If the property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that for the purpose of determining loss the basis shall be the basis

so determined or the fair market value of the property at the time of the gift, whichever is lower. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Commissioner shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Commissioner finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the Commissioner as of the date or approximate date at which, according to the best information that the Commissioner is able to obtain, such property was acquired by such donor or last preceding owner.

(3) **Transfer in trust after December 31, 1920.** If the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a bequest or devise) the basis shall be the same as it would be in the hands of the grantor, increased in the amount of gain or decreased in the amount of loss recognized to the grantor upon such transfer under the law applicable to the year in which the transfer was made.

(4) **Gift or transfer in trust before January 1, 1921.** If the property was acquired by gift or transfer in trust on or before December 31, 1920, the basis shall be the fair market value of such property at the time of such acquisition.

(5) **Property transmitted at death.** If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, the basis shall be the fair market value of such property at the time of such acquisition. In the case of property transferred in trust to pay the income for life to or upon the order or direction of the grantor, with the right reserved to the grantor at all times prior to his death to revoke the trust, the basis of such property in the hands of the persons entitled under the terms of the trust instrument to the property after the grantor's death shall, after such death, be the same as if the trust instrument had been a will executed on the day of the grantor's death. For the purpose of this paragraph property passing without full and adequate consideration under a general power of appointment exercised by will shall be deemed to be property passing from the individual exercising such power by bequest or devise. If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, and if the decedent died after August 26, 1937, and if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company, then the basis shall be the fair market value of such property at the time of such acquisition or the basis in the hands of the decedent, whichever is lower.

(6) **Tax-free exchanges generally.** If the property was acquired, after February 28, 1913, upon an exchange described in section 112 (b) to (e), inclusive, the basis (except as provided in paragraphs (15), (17), or (18) of this subsection) shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 112 (b) to be received without the recognition of gain or loss, and in part of other property, the basis provided in this paragraph shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. Where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a

liability, such assumption or acquisition (in the amount of the liability) shall, for the purposes of this paragraph, be considered as money received by the taxpayer upon the exchange. This paragraph shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it.

(7) **Transfers to corporation.** If the property was acquired—

(A) after December 31, 1917, and in a taxable year beginning before January 1, 1936, by a corporation in connection with a reorganization, and immediately after the transfer an interest or control in such property of 50 per centum or more remained in the same persons or any of them, or

(B) in a taxable year beginning after December 31, 1935, by a corporation in connection with a reorganization,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. This paragraph shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer.

(8) **Property acquired by issuance of stock or as paid-in surplus.** If the property was acquired after December 31, 1920, by a corporation—

(A) by the issuance of its stock or securities in connection with a transaction described in section 112 (b) (5) (including, also, cases where part of the consideration for the transfer of such property to the corporation was property or money, in addition to such stock or securities), or

(B) as paid-in surplus or as a contribution to capital, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

(9) **Involuntary conversion.** If the property was acquired, after February 28, 1913, as the result of a compulsory or involuntary conversion described in section 112 (f), the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made.

(10) **Wash sales of stock.** If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 118 of this chapter or corresponding provisions of prior income tax laws, relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of.

(11) **Property acquired during affiliation.** In the case of property acquired by a corporation, during a period of affiliation, from a corporation with which it was affiliated, the basis of such property, after such period of affiliation, shall be determined, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, without regard to inter-company transactions in respect of which gain or loss was not recognized. For the purposes of this paragraph, the term "period of affiliation" means the period

during which such corporations were affiliated (determined in accordance with the law applicable thereto) but does not include any taxable year beginning on or after January 1, 1922, unless a consolidated return was made, nor any taxable year after the taxable year 1928. The basis in case of property acquired by a corporation during any period, in the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return is made by such corporation under section 141 of this chapter or the Revenue Act of 1928, 45 Stat. 831, or the Revenue Act of 1932, 47 Stat. 213, or the Revenue Act of 1934, 48 Stat. 720, or the Revenue Act of 1936, 49 Stat. 1698, shall be determined in accordance with regulations prescribed under section 141 (b) of this chapter or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934 or the Revenue Act of 1936. The basis in the case of property held by a corporation during any period, in the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return is made by such corporation under section 141 of this chapter or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934 or the Revenue Act of 1936, shall be adjusted in respect of any items relating to such period, in accordance with regulations prescribed under section 141 (b) of this chapter or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934 or the Revenue Act of 1936, applicable to such period.

(12) **Basis established by Revenue Act of 1932.** If the property was acquired, after February 28, 1913, in any taxable year beginning prior to January 1, 1934, and the basis thereof, for the purposes of the Revenue Act of 1932, 47 Stat. 199, was prescribed by section 113 (a) (6), (7), or (9) of such Act, then for the purposes of this chapter the basis shall be the same as the basis therein prescribed in the Revenue Act of 1932.

(13) **Partnerships.** If the property was acquired, after February 28, 1913, by a partnership and the basis is not otherwise determined under any other paragraph of this subsection, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. If the property was distributed in kind by a partnership to any partner, the basis of such property in the hands of the partner shall be such part of the basis in his hands of his partnership interest as is properly allocable to such property.

(14) **Property acquired before March 1, 1913.** In the case of property acquired before March 1, 1913, if the basis otherwise determined under this subsection, adjusted (for the period prior to March 1, 1913) as provided in subsection (b), is less than the fair market value of the property as of March 1, 1913, then the basis for determining gain shall be such fair market value. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date.

(15) **Property received by a corporation on complete liquidation of another.** If the property was received by a corporation upon a distribution in complete liquidation of another corporation within the meaning of section 112 (b) (6), then the basis shall be the same as it would be in the hands of the transferor. The basis of property with respect to which election has been made in pursuance of the last sentence of section 113 (a) (15) of the Revenue Act of 1936, as amended, shall, in the hands of the corporation making such election, be the basis prescribed in the Revenue Act of 1934, as amended.

(16) **Basis established by revenue act of 1934.** If the property was acquired, after February 28, 1913, in any taxable year beginning prior to January 1, 1936, and the basis thereof, for the purposes of the Revenue Act of 1934 was prescribed by section 113 (a) (6), (7), or (8) of such Act, then for the purposes of

this chapter the basis shall be the same as the basis therein prescribed in the Revenue Act of 1934.

(17) **Property acquired in connection with exchanges and distributions in obedience to certain orders of securities and exchange commission.** If the property was acquired in any manner described in section 372, the basis shall be that prescribed in such section with respect to such property.

(18) **Property received in certain corporate liquidations.** If the property was acquired by a shareholder in the liquidation of a corporation in cancellation or redemption of stock with respect to which gain was realized, but with respect to which, as the result of an election made by him under paragraph (7) of section 112 (b), of the Revenue Act of 1938, 52 Stat. 487, the extent to which gain was recognized was determined under such paragraph, then the basis shall be the same as the basis of such stock cancelled or redeemed in the liquidation, decreased in the amount of any money received by him, and increased in the amount of gain recognized to him.

(19) **Property acquired by corporate stock distribution.** (A) If the property was acquired by a shareholder in a corporation and consists of stock in such corporation, or rights to acquire such stock, acquired by him after February 28, 1913, in a distribution by such corporation (hereinafter in this paragraph called "new stock"), or consists of stock in respect of which such distribution was made (hereinafter in this paragraph called "old stock") and

(i) the new stock was acquired in a taxable year beginning before January 1, 1936; or

(ii) the new stock was acquired in a taxable year beginning after December 31, 1935, and its distribution did not constitute income to the shareholder within the meaning of the Sixteenth Amendment to the Constitution;

then the basis of the new stock and of the old stock, respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock; such allocation to be made under regulations which shall be prescribed by the Commissioner with the approval of the Secretary.

(B) Where the new stock consisted of rights to acquire stock and such rights were sold in a taxable year beginning before January 1, 1939, and there was included in the gross income for such year the entire amount of the proceeds of such sale, then, if before the date of the enactment of the Revenue Act of 1939² the taxpayer has not asserted (by claim for a refund or credit or otherwise) that any part of the proceeds of the sale of such new stock should be excluded from gross income for the year of its sale, the basis of the old stock shall be determined without regard to subparagraph (A); and no part of the proceeds of the sale of such new stock shall ever be excluded from the gross income of the year of such sale.

(C) Subparagraph (A) shall not apply if the new stock was acquired in a taxable year beginning before January 1, 1936, and there was included, as a dividend, in gross income for such year an amount on account of such stock, and after such inclusion such amount was not (before the date of the enactment of the Revenue Act of 1939) excluded from gross income for such year.

(D) Subparagraph (A) shall not apply if the new stock or the old stock was sold or otherwise disposed of in a taxable year beginning prior to January 1, 1936, and the basis (determined by a decision of a court or the Board of Tax Appeals, or a closing agreement, and the decision or agreement became final before the ninetieth day after the date of the enactment of the Revenue Act of 1939) for determining gain or loss on such sale or other disposition was ascertained by a method other than that of allocation of the basis of the old stock. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, §§ 213 (d), 214 (a), 53 Stat. 871, 872.)

(b) **Adjusted basis.** The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided.

(1) **General rule.** Proper adjustment in respect of the property shall in all cases be made—

(A) For expenditures, receipts, losses, or other items, properly chargeable to capital account, including taxes and other carrying charges on unimproved and unproductive real property, but no such adjustment shall be made for taxes or other carrying charges for which deductions have been taken by the taxpayer in determining net income for the taxable year or prior taxable years;

(B) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent allowed (but not less than the amount allowable) under this chapter or prior income tax laws. Where for any taxable year prior to the taxable year 1932 the depletion allowance was based on discovery value or a percentage of income, then the adjustment for depletion for such year shall be based on the depletion which would have been allowable for such year if computed without reference to discovery value or a percentage of income;

(C) in respect of any period prior to March 1, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent sustained;

(D) in the case of stock (to the extent not provided for in the foregoing subparagraphs) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax-free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the provisions of the Revenue Act of 1918, Feb. 24, 1919, c. 18, 40 Stat. 1057, or the Revenue Act of 1921, Nov. 23, 1921, c. 136, 42 Stat. 227, out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918 or 1921);

(E) to the extent provided in section 337 (f) in the case of the stock of United States shareholders in a foreign personal holding company; and

(F) to the extent provided in section 28 (h) in the case of amounts specified in a shareholder's consent made under section 28.

(G) in the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to section 123 of this chapter, and to the extent of any deficiency on such loan with respect to which the taxpayer has been relieved from liability.

(2) **Substituted basis.** The term "substituted basis" as used in this subsection means a basis determined under any provision of subsection (a) of this section or under any corresponding provision of a prior income tax law, providing that the basis shall be determined—

(A) by reference to the basis in the hands of a transferor, donor, or grantor, or

(B) by reference to other property held at any time by the person for whom the basis is to be determined.

Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in paragraph (1) of this subsection shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases.

(3) **Discharge of indebtedness.** Where in the case of a corporation any amount is excluded from gross income under section 22 (b) (9) on account of the discharge of indebtedness the whole or a part of the amount so excluded from gross income shall be applied in reduction of the basis of any property held (whether before or after the time of the discharge) by the taxpayer during any portion of the taxable year in which such discharge occurred. The amount to be so applied (not in excess of the amount so excluded from gross income, reduced by the amount of any deduction disallowed under section 22 (b) (9)) and the particular properties to which the reduction shall be allocated, shall be determined under regulations (prescribed by the Commissioner with the approval of the Secretary) in effect at the time of the filing of the consent by the taxpayer referred to in section 22 (b) (9). The reduction shall be made as of the first day of the taxable year in which the discharge occurred except in the case of property not held by the taxpayer on such first day, in which case it shall take effect as of the time the holding of the taxpayer began. (53 Stat. 40, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, §§ 213 (d), 214 (a), 215 (b), 223 (b), 53 Stat. 871, 872, 879.)

Act June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 213 (i), 53 Stat. 872, provided as follows: "(i) **BASIS UNDER PRIOR ACTS.**—

"(1) Section 113 (a) (6) of the Revenue Acts of 1938, 1936, 1934, 1932, and 1928, and section 204 (a) (6) of the Revenue Acts of 1926 and 1924 are amended by inserting before the last sentence thereof the following: 'Where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for the purposes of this paragraph, be considered as money received by the taxpayer upon the exchange.'

"(2) The amendments made by paragraph (1) to the respective Acts amended shall be effective as to each of such Acts as of the date of enactment of such Act."

Act June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 214 (e) and (f), 53 Stat. 871, provided as follows: "(e) **BASIS UNDER PRIOR ACTS.**—The following rules shall be applied, for the purposes of the Revenue Act of 1938 or any prior revenue Act as if such rules were a part of each such Act when it was enacted, in determining the basis of property acquired by a shareholder in a corporation which consists of stock in such corporation, or rights to acquire such stock, acquired by him after February 28, 1913, in a distribution by such corporation (hereinafter in this subsection called 'new stock'), or consisting of stock in respect of which such distribution was made (hereinafter in this subsection called 'old stock') if the new stock was acquired in a taxable year beginning before January 1, 1936, or acquired in a taxable year beginning after December 31, 1935, and its distribution did not constitute income to the shareholder within the meaning of the Sixteenth Amendment to the Constitution:

"(1) The basis of the new stock and of the old stock, respectively, shall, in the shareholder's hands, be determined by allocating between the old stock and the new stock the adjusted basis of the old stock; such allocation to be made under regulations which shall be prescribed by the Commissioner with the approval of the Secretary.

"(2) Where the new stock consisted of rights to acquire stock and such rights were sold and there was included in the gross income for the taxable year of the sale the entire amount of the proceeds of such sale, then, if before the date of the enactment of this Act the taxpayer has not asserted (by claim for a refund or credit or otherwise) that any part of the proceeds of the sale of such new stock should be excluded from gross income for the year of its sale, the basis of the old stock shall be determined without regard to paragraph (1) and no part of the proceeds of the sale of such new stock shall ever be excluded from the gross income of the year of such sale.

"(3) Paragraph (1) shall not apply if the new stock was acquired in a taxable year beginning before January 1, 1936, and there was included, as a dividend, in gross income for such year an amount on account of such stock, and after such inclusion such amount was not (before the date of the enactment of this Act) excluded from gross income for such year.

"(4) Paragraph (1) shall not apply if the new stock or the old stock was sold or otherwise disposed of in a taxable year beginning before January 1, 1936, and the basis (determined by a decision of a court or the Board of Tax Appeals, or a closing agreement, and the decision or agreement became final before the ninetieth day after the date of the enactment of this Act) for determining gain or loss on such sale or other disposition was ascertained by a method other than that of allocation of the basis of the old stock.

"(f) **DETERMINATION UNDER PRIOR ACTS OF PERIOD FOR WHICH HELD.**—For the purposes of the Revenue Act of 1938 or any prior revenue Act, in determining the period for which the taxpayer has held stock or rights to acquire stock, received upon a distribution, if the basis of such stock or rights is determined under section 214 (e) (1) of the Revenue Act of 1939, there shall (under regulations which shall be prescribed by the Commissioner with the approval of the Secretary) be included the period for which he held the stock in the distributing corporation prior to the receipt of such stock or rights

upon such distribution. This subsection shall be applicable as if it were a part of each such Act when such Act was enacted."

Subsec. (a), par. (6), next to last sentence was added by Act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 213 (e) of said act.

Subsec. (a), par. (19), was added by Act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 214 (d) of said act.

Subsec. (b), par. (1), subpar. (G) was added by Act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 223 (c) of said act.

Subsec. (b), par. (3), was added by Act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 215 (c) of said act.

Derived from Act May 28, 1938, c. 289, § 113, 52 Stat. 490.

Similar provisions. Acts June 22, 1936, c. 690, § 113, 49 Stat. 1682; May 10, 1934, c. 277, § 113, 48 Stat. 706; June 6, 1932, c. 209, § 113, 47 Stat. 198; May 29, 1928, c. 852, § 113, 45 Stat. 818; Feb. 26, 1926, c. 27, § 204, 44 Stat. 14; June 2, 1924, c. 234, § 204, 43 Stat. 258; Nov. 23, 1921, c. 136, § 202, 42 Stat. 229, as amended by Act Mar. 4, 1923, c. 294, §§ 1, 2, 42 Stat. 1560; Feb. 24, 1919, c. 18, § 202, 40 Stat. 1060; Sept. 8, 1916, c. 463, §§ 2, 10, 39 Stat. 757, 765, as amended by Act Oct. 3, 1917, c. 63, §§ 1200, 1206, 40 Stat. 329, 333.

Basis for determining gain or loss on new vessel acquired in exchange for obsolete vessel under Merchant Marine Act, section 1101 et seq. of Title 46, see section 1160 (e) of Title 46, Shipping.

§ 114. **Basis for depreciation and depletion—(a) Basis for depreciation.** The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113 (b) for the purpose of determining the gain upon the sale or other disposition of such property.

(b) **Basis for depletion—(1) General rule.** The basis upon which depletion is to be allowed in respect of any property shall be the adjusted basis provided in section 113 (b) for the purpose of determining the gain upon the sale or other disposition of such property, except as provided in paragraphs (2), (3), and (4) of this subsection.

(2) **Discovery value in case of mines.** In the case of mines (other than metal, coal, or sulphur mines) discovered by the taxpayer after February 28, 1913, the basis for depletion shall be the fair market value of the property at the date of discovery or within thirty days thereafter, if such mines were not acquired as the result of purchase of a proven tract or lease, and if the fair market value of the property is materially disproportionate to the cost. The depletion allowance under section 23 (m) based on discovery value provided in this paragraph shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property upon which the discovery was made, except that in no case shall the depletion allowance under section 23 (m) be less than it would be if computed without reference to discovery value. Discoveries shall include minerals in commercial quantities contained within a vein or deposit discovered in an existing mine or mining tract by the taxpayer after February 28, 1913, if the vein or deposit thus discovered was not merely the uninterrupted extension of a continuing commercial vein or deposit already known to exist, and if the discovered minerals are of sufficient value and quantity that they could be separately mined and marketed at a profit.

(3) **Percentage depletion for oil and gas wells.** In the case of oil and gas wells the allowance for depletion under section 23 (m) shall be 27½ per centum of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance under section 23 (m) be less than it would be if computed without reference to this paragraph.

(4) **Percentage depletion for coal and metal mines and sulphur.** The allowance for depletion under section 23 (m) shall be, in the case of coal mines, 5 per centum, in the case of metal mines, 15 per centum, and,

in the case of sulphur mines or deposits, 23 per centum, of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property. A taxpayer making his first return under this chapter in respect of a property shall state whether he elects to have the depletion allowance for such property for the taxable year for which the return is made computed with or without regard to percentage depletion, and the depletion allowance in respect of such property for such year shall be computed according to the election thus made. If the taxpayer fails to make such statement in the return, the depletion allowance for such property for such year shall be computed without reference to percentage depletion. The method, determined as above, of computing the depletion allowance shall be applied in the case of the property for all taxable years in which it is in the hands of such taxpayer, or of any other person if the basis of the property (for determining gain) in his hands is, under section 113, determined by reference to the basis in the hands of such taxpayer, either directly or through one or more substituted bases, as defined in that section. The above right of election shall be subject to the qualification that this paragraph shall, for the purpose of determining whether the method of computing the depletion allowance follows the property, be considered a continuation of section 114 (b) (4) of the Revenue Act of 1934, 48 Stat. 710, and the Revenue Act of 1936, 49 Stat. 1686, and the Revenue Act of 1938, 52 Stat. 494, and as giving no new election in cases where either of such sections would, if applied, give no new election. (53 Stat. 45.)

Derived from Act May 28, 1938, c. 289, § 114, 52 Stat. 494. Similar provisions. Acts June 22, 1936, c. 690, § 114, 49 Stat. 1686; May 10, 1934, c. 277, § 114, 48 Stat. 710; June 6, 1932, c. 209, § 114, 47 Stat. 202; May 29, 1928, c. 852, § 114, 45 Stat. 821; Feb. 26, 1926, c. 27, § 204, 44 Stat. 14; June 2, 1924, c. 234, § 204, 43 Stat. 258.

§ 115. Distributions by corporations—(a) Definition of dividend. The term "dividend" when used in this chapter (except in section 203 (a) (3) and section 207 (c) (1), relating to insurance companies) means any distribution made by a corporation to its shareholders, whether in money or in other property, (1) out of its earnings or profits accumulated after February 28, 1913, or (2) out of the earnings or profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

(h) Source of distributions. For the purposes of this chapter every distribution is made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits. Any earnings or profits accumulated, or increase in value of property accrued, before March 1, 1913, may be distributed exempt from tax, after the earnings and profits accumulated after February 28, 1913, have been distributed, but any such tax-free distribution shall be applied against and reduce the adjusted basis of the stock provided in section 113.

(c) Distributions in liquidation. Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under section 111, but shall be recognized only to the extent provided in section 112. Despite the provisions of section 117, the gain so recognized shall be considered as a short-term capital gain, except in the case of amounts distributed in complete liquidation. For the purpose of the preceding sentence, "complete liquidation" includes any one of a series of distributions made by a corporation in complete cancellation or redemption of all of its stock

in accordance with a bona fide plan of liquidation and under which the transfer of the property under the liquidation is to be completed within a time specified in the plan, not exceeding, from the close of the taxable year during which is made the first of the series of distributions under the plan, (1) three years, if the first of such series of distributions is made in a taxable year beginning after December 31, 1937, or (2) two years, if the first of such series of distributions was made in a taxable year beginning before January 1, 1938. In the case of amounts distributed (whether before January 1, 1939, or on or after such date) in partial liquidation (other than a distribution to which the provisions of subsection (h) of this section are applicable) the part of such distribution which is properly chargeable to capital account shall not be considered a distribution of earnings or profits. If any distribution in complete liquidation (including any one of a series of distributions made by the corporation in complete cancellation or redemption of all its stock) is made by a foreign corporation which with respect to any taxable year beginning on or before, and ending after, August 26, 1937, was a foreign personal holding company, and with respect to which a United States group (as defined in section 331 (a) (2)) existed after August 26, 1937, and before January 1, 1938, then, despite the foregoing provisions of this subsection, the gain recognized resulting from such distribution shall be considered as a short-term capital gain—

(1) Unless such liquidation is completed before July 1, 1938; or

(2) Unless (if it is established to the satisfaction of the Commissioner by evidence submitted before July 1, 1938, that due to the laws of the foreign country in which such corporation is incorporated, or for other reason, it is or will be impossible to complete the liquidation of such company before such date) the liquidation is completed on or before such date as the Commissioner may find reasonable, but not later than December 31, 1938.

(d) Other distributions from capital. If any distribution made by a corporation to its shareholders is not out of increase in value of property accrued before March 1, 1913, and is not a dividend, then the amount of such distribution shall be applied against and reduce the adjusted basis of the stock provided in section 113, and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property. This subsection shall not apply to a distribution in partial or complete liquidation or to a distribution which, under subsection (f) (1), is not treated as a dividend, whether or not otherwise a dividend. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 214 (b), 53 Stat. 873.)

(e) Distributions by personal service corporations. Any distribution made by a corporation, which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 or the Revenue Act of 1921, out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918, 40 Stat. 1070, or section 218 of the Revenue Act of 1921, 42 Stat. 245, shall be exempt from tax to the distributees.

(f) Stock dividends—(1) General rule. A distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock shall not be treated as a dividend to the extent that it does not constitute income to the shareholder within the meaning of the Sixteenth Amendment to the Constitution.

(2) Election of shareholders as to medium of payment. Whenever a distribution by a corporation is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either (A) in its stock or in rights to acquire its stock, of a class which if distributed without election would be exempt from tax under paragraph (1), or (B) in money or any other property (including its stock or in rights to acquire its stock, of a class which if distributed without election would not

be exempt from tax under paragraph (1)), then the distribution shall constitute a taxable dividend in the hands of all shareholders, regardless of the medium in which paid.

(g) **Redemption of stock.** If a corporation cancels or redeems its stock (whether or not such stock was issued as a stock dividend) at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock, to the extent that it represents a distribution of earnings or profits accumulated after February 28, 1913, shall be treated as a taxable dividend.

(h) **Effect on earnings and profits of distributions of stock.** The distribution (whether before January 1, 1939, or on or after such date) to a distributee by or on behalf of a corporation of its stock or securities, of stock or securities in another corporation, or of property or money, shall not be considered a distribution of earnings or profits of any corporation—

(1) if no gain to such distributee from the receipt of such stock or securities, property or money, was recognized by law, or

(2) if the distribution was not subject to tax in the hands of such distributee because it did not constitute income to him within the meaning of the Sixteenth Amendment to the Constitution or because exempt to him under section 115 (f) of the Revenue Act of 1934, 48 Stat. 712, or a corresponding provision of a prior Revenue Act.

As used in this subsection the term "stock or securities" includes rights to acquire stock or securities.

(i) **Definition of partial liquidation.** As used in this section the term "amounts distributed in partial liquidation" means a distribution by a corporation in complete cancellation or redemption of a part of its stock, or one of a series of distributions in complete cancellation or redemption of all or a portion of its stock.

(j) **Valuation of dividend.** If the whole or any part of a dividend is paid to a shareholder in any medium other than money the property received other than money shall be included in gross income at its fair market value at the time as of which it becomes income to the shareholder.

(k) **Consent distributions.**

For taxability as dividends of amounts agreed to be included in gross income by shareholders' consents, see section 28.

(53 Stat. 46, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 214 (b), 53 Stat. 873.)

Subsec. (d) was amended by Act June 29, 1939, cited to credit, and made applicable to taxable years beginning after December 31, 1938, by § 214 (d) of said act.

Derived from Act May 28, 1938, c. 289, § 115, 52 Stat. 496.

Similar provisions. Acts June 22, 1936, c. 690, § 115, 49 Stat. 1687, as amended by Act Aug. 26, 1937, c. 815, Title II, § 205, 50 Stat. 825; May 10, 1934, c. 277, § 115, 48 Stat. 711; June 6, 1932, c. 209, § 115, 47 Stat. 203; May 29, 1928, c. 852, § 115, 45 Stat. 822; Feb. 28, 1926, c. 27, § 201, 44 Stat. 10; June 2, 1924, c. 234, § 201, 43 Stat. 254; Nov. 23, 1921, c. 136, § 201, 42 Stat. 228; Feb. 24, 1919, c. 18, § 201, 40 Stat. 1059; Sept. 8, 1916, c. 463, § 31, as added by Act Oct. 3, 1917, c. 63, § 1211, 40 Stat. 336; Sept. 8, 1916, c. 463, §§ 2, 10, 39 Stat. 757, 765, as amended by Act Oct. 3, 1917, c. 63, §§ 1200, 1206, 40 Stat. 329, 333.

§ 116. Exclusions from gross income. In addition to the items specified in section 22 (b), the following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(a) **Earned income from sources without United States.** In the case of an individual citizen of the United States, a bona fide nonresident of the United States for more than six months during the taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) if such amounts would constitute earned income as defined in section 25 (a) if received from sources within the United States; but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this subsection.

(b) **Repealed.** (April 12, 1939, c. 59, Title I, § 2, 53 Stat. 575.)

(c) **Income of foreign governments.** The income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments, or from any other source within the United States.

(d) **Income of states, municipalities, etc.** Income derived from any public utility or the exercise of any essential governmental function and accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, or income accruing to the government of any possession of the United States, or any political subdivision thereof.

Whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, prior to September 8, 1916, entered in good faith into a contract with any person, the object and purpose of which is to acquire, construct, operate, or maintain a public utility—

(1) If by the terms of such contract the tax imposed by this chapter is to be paid out of the proceeds from the operation of such public utility, prior to any division of such proceeds between the person and the State, Territory, political subdivision, or the District of Columbia, and if, but for the imposition of the tax imposed by this chapter, a part of such proceeds for the taxable year would accrue directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, then a tax upon the net income from the operation of such public utility shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter, but there shall be refunded to such State, Territory, political subdivision, or the District of Columbia (under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary) an amount which bears the same relation to the amount of the tax as the amount which (but for the imposition of the tax imposed by this chapter) would have accrued directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, bears to the amount of the net income from the operation of such public utility for such taxable year.

(2) If by the terms of such contract no part of the proceeds from the operation of the public utility for the taxable year would, irrespective of the tax imposed by this chapter, accrue directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, then the tax upon the net income of such person from the operation of such public utility shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter.

(e) **Bridges to be acquired by state or political subdivision.** Whenever any State or political subdivision thereof, in pursuance of a contract to which it is not a party entered into before May 29, 1928, is to acquire a bridge—

(1) If by the terms of such contract the tax imposed by this chapter is to be paid out of the proceeds from the operation of such bridge prior to any division of such proceeds, and if, but for the imposition of the tax imposed by this chapter, a part of such proceeds for the taxable year would accrue directly to or for the use of or would be applied for the benefit of such State or political subdivision, then a tax upon the net income from the operation of such bridge shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter, but there shall be refunded to such State or political subdivision (under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary) an amount which bears the same relation to the amount of the tax as the amount which (but for the imposition of the tax imposed by this chapter) would have accrued directly to or for the use of or would be applied for the benefit of such State or political subdivision, bears to the amount of the net income from the operation of such bridge for such taxable year. No such refund shall be made

unless the entire amount of the refund is to be applied in part payment for the acquisition of such bridge.

(2) If by the terms of such contract no part of the proceeds from the operation of the bridge for the taxable year would, irrespective of the tax imposed by this chapter, accrue directly to or for the use of or be applied for the benefit of such State or political subdivision, then the tax upon the net income from the operation of such bridge shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter.

(f) **Dividend from "China Trade Act" corporation.** In the case of a person, amounts distributed as dividends to or for his benefit by a corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., Title 15, c. 4), if, at the time of such distribution, he is a resident of China, and the equitable right to the income of the shares of stock of the corporation is in good faith vested in him.

(g) **Shipowners' protection and indemnity associations.** The receipts of shipowners' mutual protection and indemnity associations not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder; but such corporations shall be subject as other persons to the tax upon their net income from interest, dividends, and rents.

(h) **Compensation of employees of foreign governments—(1) Rule for exclusion.** Wages, fees, or salary of an employee of a foreign government (including a consular or other officer, or a nondiplomatic representative) received as compensation for official services to such government—

(A) If such employee is not a citizen of the United States; and

(B) If the services are of a character similar to those performed by employees of the Government of the United States in foreign countries; and

(C) If the foreign government whose employee is claiming exemption grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country.

(2) **Certificate by Secretary of State.** The Secretary of State shall certify to the Secretary of the Treasury the names of the foreign countries which grant an equivalent exemption to the employees of the Government of the United States performing services in such foreign countries, and the character of the services performed by employees of the Government of the United States in foreign countries.

(i) **Treasury bills.**

For exemption from taxation of gain derived from the sale or other disposition of Treasury Bills, issued after June 17, 1930, under the second Liberty bond act, as amended, see Act of June 17, 1930, c. 512, 46 Stat. 775 (U. S. C., Title 31, § 754.)

(53 Stat. 48, as amended April 12, 1939, c. 59, § 2, 53 Stat. 575.)

Subd. (b) relating to teachers in Alaska and Hawaii was repealed by Act April 12, 1939, c. 59, § 2, 53 Stat. 575.

Derived from Act May 28, 1938, c. 289, § 116, 52 Stat. 498. **Similar provisions.** Acts June 22, 1936, c. 690, § 116, 49 Stat. 1689; May 10, 1934, c. 277, § 116, 48 Stat. 712, as amended by Act Aug. 27, 1935, c. 767, § 1, 49 Stat. 908; June 6, 1932, c. 209, § 116, 47 Stat. 204; May 29, 1928, c. 852, § 116, 45 Stat. 823; Feb. 26, 1926, c. 27, § 213, 44 Stat. 23; June 2, 1924, c. 234, § 213, 43 Stat. 267, as amended by Act Feb. 26, 1925, c. 345, § 12, 43 Stat. 997; Nov. 23, 1921, c. 136, § 213, 42 Stat. 237, as amended by Act Sept. 19, 1922, c. 346, § 26, 42 Stat. 856; Feb. 24, 1919, c. 18, § 213, 40 Stat. 1065.

Various exemptions were contained in Act Sept. 8, 1916, c. 463, § 4, 39 Stat. 758, as amended by Act Oct. 3, 1917, c. 63, § 1200, 40 Stat. 329; Act Sept. 8, 1916, c. 463, § 11b, 30, 39 Stat. 767, as amended by Act Oct. 3, 1917, c. 63, § 1211, 40 Stat. 336; Act Oct. 3, 1913, c. 16, § 11, subd. B, G, 38 Stat. 167, 172.

§ 117. **Capital gains and losses—(a) Definitions.** As used in this chapter—

(1) **Capital assets.** The term "capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course

of his trade or business, or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23 (1);

(2) **Short-term capital gain.** The term "short-term capital gain" means gain from the sale or exchange of a capital asset held for not more than 18 months, if and to the extent such gain is taken into account in computing net income;

(3) **Short-term capital loss.** The term "short-term capital loss" means loss from the sale or exchange of a capital asset held for not more than 18 months, if and to the extent such loss is taken into account in computing net income;

(4) **Long-term capital gain.** The term "long-term capital gain" means gain from the sale or exchange of a capital asset held for more than 18 months, if and to the extent such gain is taken into account in computing net income;

(5) **Long-term capital loss.** The term "long-term capital loss" means loss from the sale or exchange of a capital asset held for more than 18 months, if and to the extent such loss is taken into account in computing net income;

(6) **Net short-term capital gain.** The term "net short-term capital gain" means the excess of short-term capital gains for the taxable year over the sum of (A) short-term capital losses for the taxable year, plus (B) the net short-term capital loss of the preceding taxable year (if beginning after December 31, 1937), to the extent brought forward to the taxable year under subsection (e);

(7) **Net short-term capital loss.** The term "net short-term capital loss" means the excess of short-term capital losses for the taxable year over the short-term capital gains for such year;

(8) **Net long-term capital gain.** The term "net long-term capital gain" means the excess of long-term capital gains for the taxable year over the long-term capital losses for such year;

(9) **Net long-term capital loss.** The term "net long-term capital loss" means the excess of long-term capital losses for the taxable year over the long-term capital gains for such year.

(b) **Percentage taken into account.** In the case of a taxpayer, other than a corporation, only the following percentages of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing net income:

100 per centum if the capital asset has been held for not more than 18 months;

66 $\frac{2}{3}$ per centum if the capital asset has been held for more than 18 months but not for more than 24 months;

50 per centum if the capital asset has been held for more than 24 months.

(c) **Alternative taxes—(1) In case of net long-term capital gain.** If for any taxable year a taxpayer (other than a corporation) derives a net long-term capital gain, there shall be levied, collected, and paid, in lieu of the tax imposed by sections 11 and 12, a tax determined as follows, if and only if such tax is less than the tax imposed by such sections:

A partial tax shall first be computed upon the net income reduced by the amount of the net long-term capital gain, at the rates and in the manner as if this subsection had not been enacted, and the total tax shall be the partial tax plus 30 per centum of the net long-term capital gain.

(2) **In case of net long-term capital loss.** If for any taxable year a taxpayer (other than a corporation) sustains a net long-term capital loss, there shall be levied, collected, and paid, in lieu of the tax imposed by sections 11 and 12, a tax determined as follows, if and only if such tax is greater than the tax imposed by such sections:

A partial tax shall first be computed upon the net income increased by the amount of the net long-term capital loss, at the rates and in the manner as if this subsection had not been enacted, and the total tax shall be the partial tax minus 30 per centum of the net long-term capital loss.

(d) **Limitation on capital losses.** Long-term capital losses shall be allowed, but short-term capital losses shall be allowed only to the extent of short-term capital gains. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 212 (a), 53 Stat. 869.)

(e) **Net short-term capital loss carry-over.** If any taxpayer sustains in any taxable year, beginning after December 31, 1937, in the case of a taxpayer other than a corporation, or beginning after December 31, 1939, in the case of a corporation, a net short-term capital loss, such loss (in an amount not in excess of the net income for such year) shall be treated in the succeeding taxable year as a short-term capital loss, except that it shall not be included in computing the net short-term capital loss for such year. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 212 (b), 53 Stat. 869.)

(f) **Retirement of bonds, etc.** For the purposes of this chapter, amounts received by the holder upon the retirement of bonds, debentures, notes, or certificates or other evidences of indebtedness issued by any corporation (including those issued by a government or political subdivision thereof), with interest coupons or in registered form, shall be considered as amounts received in exchange therefor.

(g) **Gains and losses from short sales, etc.** For the purpose of this chapter—

(1) gains or losses from short sales of property shall be considered as gains or losses from sales or exchanges of capital assets; and

(2) gains or losses attributable to the failure to exercise privileges or options to buy or sell property shall be considered as short-term capital gains or losses.

(h) **Determination of period for which held.** For the purpose of this section—

(1) In determining the period for which the taxpayer has held property received on an exchange there shall be included the period for which he held the property exchanged, if under the provisions of section 113, the property received has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged.

(2) In determining the period for which the taxpayer has held property however acquired there shall be included the period for which such property was held by any other person, if under the provisions of section 113, such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

(3) In determining the period for which the taxpayer has held stock or securities received upon a distribution where no gain was recognized to the distributee under the provisions of section 112 (g) of the Revenue Act of 1928, 45 Stat. 818, or the Revenue Act of 1932, 48 Stat. 705, or under the provisions of section 371 (c) of the Revenue Act of 1938 or this chapter, there shall be included the period for which he held the stock or securities in the distributing corporation prior to the receipt of the stock or securities upon such distribution.

(4) In determining the period for which the taxpayer has held stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 118 of this chapter or section 118 of the Revenue Act of 1928, 45 Stat. 826, or the Revenue Act of 1932, 47 Stat. 208, or the Revenue Act of 1934, 48 Stat. 715, or the Revenue Act of 1936, 49 Stat. 1692, or the Revenue Act of 1938, 52 Stat. 503, relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, there shall be included the period for which he held the stock or securities the loss from the sale or other disposition of which was not deductible.

(5) In determining the period for which the taxpayer has held stock or rights to acquire stock received upon a distribution, if the basis of such stock or rights is determined under section 113 (a) (19) (A),

there shall (under regulations prescribed by the Commissioner with the approval of the Secretary) be included the period for which he held the stock in the distributing corporation prior to the receipt of such stock or rights upon such distribution. (53 Stat. 50, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, §§ 212 (a), (b), 214 (c), 53 Stat. 869, 873.)

Subsec. (h), par. (5) was added by Act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 214 (d) of said act.

Subsec. (d) and (e) were amended by Act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939 by § 229 of said act.

Prior to said amendment subsections read as follows:“(d) **Limitation on capital losses.—(1) Corporations.** In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of \$2,000 plus the gains from such sales or exchanges. If a bank or trust company incorporated under the laws of the United States (including laws relating to the District of Columbia) or of any State or Territory, a substantial part of whose business is the receipt of deposits, sells any bond, debenture, note, or certificate or other evidence of indebtedness issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, any loss resulting from such sale (except such portion of the loss as does not exceed the amount, if any, by which the adjusted basis of such instrument exceeds the par or face value thereof) shall not be subject to the foregoing limitation and shall not be included in determining the applicability of such limitation to other losses.”“(2) **Other taxpayers.** In the case of a taxpayer other than a corporation, short-term capital losses shall be allowed only to the extent of short-term capital gains.”“(e) **Net short-term capital loss carry-over.** If any taxpayer (other than a corporation) sustains in any taxable year beginning after December 31, 1937, a net short-term capital loss, such loss (in an amount not in excess of the net income for such year) shall be treated in the succeeding taxable year as a short-term capital loss, except that it shall not be included in computing the net short-term capital loss for such year.”

Derived from Act May 28, 1938, c. 289, § 117, 52 Stat. 500.

Similar provisions. Acts June 22, 1936, c. 690, § 117, 49 Stat. 1691; May 10, 1934, c. 277, § 117, 48 Stat. 714; June 6, 1932, c. 209, § 101, 47 Stat. 191; May 29, 1928, c. 852, § 101, 45 Stat. 811; Feb. 26, 1926, c. 27, § 208, 44 Stat. 19; June 2, 1924, c. 234, § 208, 43 Stat. 262; Nov. 23, 1921, c. 136, § 206, 42 Stat. 232.

§ 118. **Loss from wash sales of stock or securities.**

(a) In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction for the loss shall be allowed under section 23 (e) (2); nor shall such deduction be allowed under section 23 (f) unless the claim is made by a corporation, a dealer in stocks or securities, and with respect to a transaction made in the ordinary course of its business.

(b) If the amount of stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(c) If the amount of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility of the loss shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary. (53 Stat. 53.)

Derived from Act May 28, 1938, c. 289, § 118, 52 Stat. 503.

Similar provisions. Acts June 22, 1936, c. 690, § 118, 49 Stat. 1692; May 10, 1934, c. 277, § 118, 48 Stat. 715; June 6, 1932, c. 209, § 118, 47 Stat. 208; May 29, 1928, c. 852, § 118, 45 Stat. 826; Feb. 26, 1926, c. 27, § 214, 44 Stat. 26, 41; June 2, 1924, c. 234, §§ 214, 234, 43 Stat. 269, 283.

§ 119. Income from sources within United States.—
(a) Gross income from sources in United States. The following items of gross income shall be treated as income from sources within the United States:

(1) Interest. Interest from the United States, any Territory, any political subdivision of a Territory, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including—

(A) interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein, or

(B) interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the gross income of such resident payor or domestic corporation has been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such payor preceding the payment of such interest, or for such part of such period as may be applicable, or

(C) income derived by a foreign central bank of issue from bankers' acceptances;

(2) Dividends. The amount received as dividends—

(A) from a domestic corporation other than a corporation entitled to the benefits of section 251, and other than a corporation less than 20 per centum of whose gross income is shown to the satisfaction of the Commissioner to have been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or

(B) from a foreign corporation unless less than 50 per centum of the gross income of such foreign corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of this section; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period derived from sources within the United States bears to its gross income from all sources; but dividends from a foreign corporation shall, for the purposes of section 131 (relating to foreign tax credit), be treated as income from sources without the United States;

(3) Personal services. Compensation for labor or personal services performed in the United States, but in the case of a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year, compensation received by such an individual (if such compensation does not exceed \$3,000 in the aggregate) for labor or services performed as an employee of or under a contract with a nonresident alien, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, shall not be deemed to be income from sources within the United States;

(4) Rentals and royalties. Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property; and

(5) Sale of real property. Gains, profits, and income from the sale of real property located in the United States.

(6) Sale of personal property.

For gains, profits, and income from the sale of personal property, see subsection (e).

(b) Net income from sources in United States. From the items of gross income specified in subsection

(a) of this section there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States.

(c) Gross income from sources without United States. The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that derived from sources within the United States as provided in subsection (a) (1) of this section;

(2) Dividends other than those derived from sources within the United States as provided in subsection (a) (2) of this section;

(3) Compensation for labor or personal services performed without the United States;

(4) Rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties; and

(5) Gains, profits, and income from the sale of real property located without the United States.

(d) Net income from sources without United States. From the items of gross income specified in subsection (c) of this section there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as net income from sources without the United States.

(e) Income from sources partly within and partly without United States. Items of gross income, expenses, losses and deductions, other than those specified in subsections (a) and (c) of this section, shall be allocated or apportioned to sources within or without the United States, under rules and regulations prescribed by the Commissioner with the approval of the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the net income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States. In the case of gross income derived from sources partly within and partly without the United States, the net income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income; and the portion of such net income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Commissioner with the approval of the Secretary. Gains, profits, and income from—

(1) transportation or other services rendered partly within and partly without the United States, or

(2) from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States,

shall be treated as derived partly from sources within and partly from sources without the United States. Gains, profits and income derived from the purchase of personal property within and its sale without the United States or from the purchase of personal property without and its sale within the United States, shall be treated as derived entirely from sources within the

country in which sold, except that gains, profits, and income derived from the purchase of personal property within a possession of the United States and its sale within the United States shall be treated as derived partly from sources within and partly from sources without the United States.

(f) Definitions. As used in this section the words "sale" or "sold" include "exchange" or "exchanged"; and the word "produced" includes "created", "fabricated", "manufactured", "extracted", "processed", "cured", or "aged". (53 Stat. 53.)

Derived from Act May 28, 1938, c. 289, § 119, 52 Stat. 503. **Similar provisions.** Acts June 22, 1938, c. 690, § 119, 49 Stat. 1693; May 10, 1934, c. 277, § 119, 48 Stat. 716; June 6, 1932, c. 209, § 119, 47 Stat. 208; May 29, 1928, c. 852, § 119, 45 Stat. 826; Feb. 26, 1926, c. 27, § 217, 233, 44 Stat. 30, 41; June 2, 1924, c. 234, § 217, 233, 43 Stat. 273, 283; Nov. 23, 1921, c. 136, § 217, 233, 42 Stat. 243, 254; Feb. 24, 1919, c. 18, § 217, 233, 40 Stat. 1069, 1077.

§ 120. Unlimited deduction for charitable and other contributions. In the case of an individual if in the taxable year and in each of the ten preceding taxable years the amount of the contributions or gifts described in section 23 (o) (or corresponding provisions of prior revenue Acts) plus the amount of income, war-profits, or excess-profits taxes paid during such year in respect of preceding taxable years, exceeds 90 per centum of the taxpayer's net income for each such year, as computed without the benefit of the applicable subsection, then the 15 per centum limit imposed by section 23 (o) shall not be applicable. (53 Stat. 56.)

Derived from Act May 28, 1938, c. 289, § 210, 52 Stat. 506. **Similar provisions.** Acts June 22, 1938, c. 690, § 120, 49 Stat. 1695; May 10, 1934, c. 277, § 120, 48 Stat. 718; June 6, 1932, c. 209, § 120, 47 Stat. 210; May 29, 1928, c. 852, § 120, 45 Stat. 828; Feb. 26, 1926, c. 27, § 214, 44 Stat. 26; June 2, 1924, c. 234, § 214, 43 Stat. 269.

§ 121. Deduction of dividends paid on certain preferred stock of certain corporations. In computing the net income of any national banking association, or of any bank or trust company organized under the laws of any State, Territory, possession of the United States, or the Canal Zone, or of any other banking corporation engaged in the business of industrial banking and under the supervision of a State banking department or of the Comptroller of the Currency, or of any incorporated domestic insurance company, there shall be allowed as a deduction from gross income, in addition to deductions otherwise provided for in this chapter, any dividend (not including any distribution in liquidation) paid, within the taxable year, to the United States or to any instrumentality thereof exempt from Federal income taxes, on the preferred stock of the corporation owned by the United States or such instrumentality. The amount allowable as a deduction under this section shall be deducted from the basic surtax credit otherwise computed under section 27 (b). (53 Stat. 56.)

Derived from Act May 28, 1938, c. 289, § 121, 52 Stat. 506. **Similar provisions.** Acts June 22, 1938, c. 690, § 121, 49 Stat. 1696; May 10, 1934, c. 277, § 121, 48 Stat. 718; June 6, 1932, c. 209, § 121, 47 Stat. 210; May 29, 1928, c. 852, § 120, 45 Stat. 828; Feb. 26, 1926, c. 27, § 214, 44 Stat. 26; June 2, 1924, c. 234, § 214, 43 Stat. 269.

§ 122. Net operating loss deduction—(a) Definition of net operating loss. As used in this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income, with the exceptions and limitations provided in subsection (d).

(b) Amount of carry-over. The term "net operating loss carry-over" means in the case of any taxable year the sum of:

(1) The amount, if any, of the net operating loss for the first preceding taxable year; and

(2) The amount of the net operating loss, if any, for the second preceding taxable year reduced by the excess, if any, of the net income (computed with the exceptions and limitations provided in subsection (d) (1), (2), (3), and (4)) for the first preceding taxable year over the net operating loss for the third preceding taxable year.

(c) Amount of net operating loss deduction. The amount of the net operating loss deduction shall be the amount of the net operating loss carry-over reduced

by the amount, if any, by which the net income (computed with the exceptions and limitations provided in subsection (d) (1), (2), (3), and (4)) exceeds, in the case of a taxpayer other than a corporation, the net income (computed without such deduction), or, in the case of a corporation, the normal-tax net income (computed without such deduction);

(d) Exceptions and limitations. The exceptions and limitations referred to in subsections (a), (b), and (c) shall be as follows:

(1) The deduction for depletion shall not exceed the amount which would be allowable if computed without reference to discovery value or to percentage depletion under section 114 (b) (2), (3), or (4);

(2) There shall be included in computing gross income the amount of interest received which is wholly exempt from the taxes imposed by this chapter, decreased by the amount of interest paid or accrued which is not allowed as a deduction by section 23 (b), relating to interest on indebtedness incurred or continued to purchase or carry certain tax-exempt obligations;

(3) No net operating loss deduction shall be allowed;

(4) Long-term capital gains and long-term capital losses shall be taken into account without regard to the provisions of section 117 (b). As so computed the amount deductible on account of long-term capital losses shall not exceed the amount includible on account of the long-term capital gains, and the amount deductible on account of short-term capital losses shall not exceed the amount includible on account of the short-term capital gains;

(5) Deductions otherwise allowed by law not attributable to the operation of a trade or business regularly carried on by the taxpayer shall (in the case of a taxpayer other than a corporation) be allowed only to the extent of the amount of the gross income not derived from such trade or business. For the purposes of this paragraph deductions and gross income shall be computed with the exceptions and limitations specified in paragraphs (1) to (4) of this subsection.

(e) No carry-over from year prior to 1939. As used in this section, the terms "third preceding taxable year", "second preceding taxable year", and "first preceding taxable year" do not include any taxable year beginning prior to January 1, 1939. (Added June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 211 (b), 53 Stat. 867.)

§ 123. Commodity credit loans. (a) Amounts received as loans from the Commodity Credit Corporation shall, at the election of the taxpayer, be considered as income and shall be included in gross income for the taxable year in which received.

(b) If a taxpayer exercises the election provided for in subsection (a) for any taxable year beginning after December 31, 1938, then the method of computing income so adopted shall be adhered to with respect to all subsequent taxable years unless with the approval of the Commissioner a change to a different method is authorized. (Added June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 223 (a), 53 Stat. 879.)

Section was made applicable to taxable years beginning after December 31, 1938, by § 223 (c) of Act June 29, 1939, cited to credit.

Act June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 223 (d) and (e), 53 Stat. 879, provided as follows: "(d) **RETROACTIVE APPLICATION.**—The provisions of subsection (a) [added § 123 to Code] shall be retroactively applied in computing income for any taxable year subject to the provisions of the Revenue Act of 1934, the Revenue Act of 1936, or the Revenue Act of 1938, or any of such Acts as amended, if—

"(1) The taxpayer elects in writing (in accordance with regulations prescribed by the Commissioner with the approval of the Secretary) within one year from the date of the enactment of this Act to treat such loans as income for such year, and

"(2) The records of the taxpayer are sufficient to permit an accurate computation of income for such year, and

"(3) The taxpayer consents in writing to the assessment, within such period as may be agreed upon, of any deficiency for such year, even though the statutory period for the assessment of any such deficiency had expired prior to the filing of such consent.

"Any tax overpaid for any such year shall be credited or refunded, subject to the statutory period of limitation properly applicable thereto.

"(e) ADJUSTMENT OF BASIS FOR PRIOR YEARS.—In computing income for any taxable year subject to the provisions of the Revenue Act of 1934, the Revenue Act of 1936, or the Revenue Act of 1938, or any of such Acts as amended, the basis for determining gain or loss from the sale or other disposition of any property, pledged to the Commodity Credit Corporation as security on a loan obtained therefrom, shall be adjusted for the amount of such loan to the extent it was considered as income and included in gross income for the year in which received, and for the amount of any deficiency on such loan with respect to which the taxpayer was relieved from liability."

SUPPLEMENT C.—CREDITS AGAINST TAX

[Supplementary to Subchapter B, Part III]

§ 131. Taxes of foreign countries and possessions of United States.—(a) Allowance of credit. If the taxpayer signifies in his return his desire to have the benefits of this section, the tax imposed by this chapter, except the tax imposed under section 102, shall be credited with:

(1) **Citizen and domestic corporation.** In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(2) **Resident of United States.** In the case of a resident of the United States, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

(3) **Alien resident of United States.** In the case of an alien resident of the United States, the amount of any such taxes paid or accrued during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; and

(4) **Partnerships and estates.** In the case of any such individual who is a member of a partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the partnership or the estate or trust paid or accrued during the taxable year to a foreign country or to any possession of the United States, as the case may be. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 216 (a), 53 Stat. 876.)

(b) **Limit on credit.** The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within such country bears to his entire net income, in the case of a taxpayer other than a corporation, or to the normal-tax net income, in the case of a corporation, for the same taxable year; and

(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources without the United States bears to his entire net income, in the case of a taxpayer other than a corporation, or to the normal-tax net income, in the case of a corporation, for the same taxable year. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 216 (b), 53 Stat. 876.)

(c) **Adjustments on payment of accrued taxes.** If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Commissioner, who shall redetermine the amount of the tax for the year or years affected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 322. In the case of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the taxpayer to give a bond with sureties satisfactory to and to be approved by the Commissioner in such sum as the Commissioner

may require, conditioned upon the payment by the taxpayer of any amount of tax found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require.

(d) **Year in which credit taken.** The credits provided for in this section may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c) of this section. If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken upon the same basis, and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.

(e) **Proof of credits.** The credits provided in this section shall be allowed only if the taxpayer establishes to the satisfaction of the Commissioner (1) the total amount of income derived from sources without the United States, determined as provided in section 119, (2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this section, such amount to be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary, and (3) all other information necessary for the verification and computation of such credits.

(f) **Taxes of foreign subsidiary.** For the purposes of this section a domestic corporation which owns a majority of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid by such foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits: *Provided*, That the amount of tax deemed to have been paid under this subsection shall in no case exceed the same proportion of the tax against which credit is taken which the amount of such dividends bears to the amount of the normal-tax net income of the domestic corporation in which such dividends are included. The term "accumulated profits" when used in this subsection in reference to a foreign corporation, means the amount of its gains, profits, or income in excess of the income, war-profits, and excess-profits taxes imposed upon or with respect to such profits or income; and the Commissioner with the approval of the Secretary shall have full power to determine from the accumulated profits of what year or years such dividends were paid; treating dividends paid in the first sixty days of any year as having been paid from the accumulated profits of the preceding year or years (unless to his satisfaction shown otherwise), and in other respects treating dividends as having been paid from the most recently accumulated gains, profits, or earnings. In the case of a foreign corporation, the income, war-profits, and excess-profits taxes of which are determined on the basis of an accounting period of less than one year, the word "year" as used in this subsection shall be construed to mean such accounting period. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 216 (c), 53 Stat. 876.)

(g) **Corporations treated as foreign.** For the purposes of this section the following corporations shall be treated as foreign corporations:

(1) A corporation entitled to the benefits of section 251, by reason of receiving a large percentage of its gross income from sources within a possession of the United States;

(2) A corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., Title 15, c. 4), and entitled to the credit provided for in section 262.

(53 Stat. 56, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 216, 53 Stat. 876.)

Subsecs. (a), (b), and (f) were amended by Act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsections read as follows:

"(a) **Allowance of credit.** If the taxpayer signifies in his return his desire to have the benefits of this section, the tax imposed by this chapter shall be credited with:

"(1) **Citizen and domestic corporation.** In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

"(2) **Resident of United States.** In the case of a resident of the United States, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

"(3) **Alien resident of United States.** In the case of an alien resident of the United States, the amount of any such taxes paid or accrued during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; and

"(4) **Partnerships and estates.** In the case of any such individual who is a member of a partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the partnership or the estate or trust paid or accrued during the taxable year to a foreign country or to any possession of the United States, as the case may be."

"(b) **Limit on credit.** The amount of the credit taken under this section shall be subject to each of the following limitations:

"(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within such country bears to his entire net income for the same taxable year; and

"(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources without the United States bears to his entire net income for the same taxable year."

"(f) **Taxes of foreign subsidiary.** For the purposes of this section a domestic corporation which owns a majority of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid by such foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits: *Provided*, That the amount of tax deemed to have been paid under this subsection shall in no case exceed the same proportion of the tax against which credit is taken which the amount of such dividends bears to the amount of the entire net income of the domestic corporation in which such dividends are included. The term 'accumulated profits' when used in this subsection in reference to a foreign corporation, means the amount of its gains, profits, or income in excess of the income, war-profits, and excess-profits taxes imposed upon or with respect to such profits or income; and the Commissioner with the approval of the Secretary shall have full power to determine from the accumulated profits of what year or years such dividends were paid; treating dividends paid in the first sixty days of any year as having been paid from the accumulated profits of the preceding year or years (unless to his satisfaction shown otherwise), and in other respects treating dividends as having been paid from the most recently accumulated gains, profits, or earnings. In the case of a foreign corporation, the income, war-profits, and excess-profits taxes of which are determined on the basis of an accounting period of less than one year, the word 'year' as used in this subsection shall be construed to mean such accounting period."

Derived from Act May 28, 1938, c. 289, § 131, 52 Stat. 506. **Similar provisions.** Acts June 22, 1936, c. 690, § 131, 49 Stat. 1696; May 10, 1934, c. 277, § 131, 48 Stat. 718; June 6, 1932, c. 209, § 131, 47 Stat. 211; May 29, 1928, c. 852, § 131, 45 Stat. 820; Feb. 26, 1926, c. 27, §§ 222, 238, 44 Stat. 36, 44; June 2, 1924, c. 234, §§ 222, 238, 43 Stat. 279, 286; Nov. 23, 1921, c. 136, §§ 222, 238, 42 Stat. 249, 258, as section 238 was amended by Act Sept. 19, 1922, c. 346, § 23, 42 Stat. 856; Feb. 24, 1919, c. 18, §§ 222, 238, 40 Stat. 1073, 1080.

SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX

[Supplementary to Subchapter B, Part V]

§ 141. **Consolidated returns of railroad corporations—(a) Privilege to file consolidated returns.** An affiliated group of corporations shall, subject to the provisions of this section, have the privilege of making a consolidated return for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all the corporations which have been members of the affiliated group at any time during the taxable year for which the return is made consent to all the regulations under subsection (b) (or, in case such regulations are not prescribed prior to the making of the return, then the regulations

prescribed under section 141 (b) of the Revenue Act of 1936, 49 Stat. 1698, insofar as not inconsistent with this chapter) prescribed prior to the making of such return; and the making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(b) **Regulations.** The Commissioner, with the approval of the Secretary, shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be determined, computed, assessed, collected, and adjusted in such manner as clearly to reflect the income and to prevent avoidance of tax liability.

(c) **Computation and payment of tax.** In any case in which a consolidated return is made the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under subsection (b) (or, in case such regulations are not prescribed prior to the making of the return, then the regulations prescribed under section 141 (b) of the Revenue Act of 1936 insofar as not inconsistent with this chapter) prescribed prior to the date on which such return is made.

(d) **Definition of "affiliated group".** As used in this section an "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(1) At least 95 per centum of the stock of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

(2) The common parent corporation owns directly at least 95 per centum of the stock of at least one of the other corporations; and

(3) Each of the corporations is either (A) a corporation whose principal business is that of a common carrier by railroad or (B) a corporation the assets of which consist principally of stock in such corporations and which does not itself operate a business other than that of a common carrier by railroad. For the purpose of determining whether the principal business of a corporation is that of a common carrier by railroad, if a common carrier by railroad has leased its railroad properties and such properties are operated as such by another common carrier by railroad, the business of receiving rents for such railroad properties shall be considered as the business of a common carrier by railroad. As used in this paragraph, the term "railroad" includes a street, suburban, or interurban electric railway, or a street or suburban trackless trolley system of transportation, or a street or suburban bus system of transportation operated as part of a street or suburban electric railway or trackless trolley system. As used in this subsection (except in paragraph (3)) the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(e) **Foreign corporations.** A foreign corporation shall not be deemed to be affiliated with any other corporation within the meaning of this section.

(f) **China Trade Act corporations.** A corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., Title 15, c. 4), shall not be deemed to be affiliated with any other corporation within the meaning of this section.

(g) **Corporations deriving income from possessions of United States.** For the purposes of this section a corporation entitled to the benefits of section 251, by reason of receiving a large percentage of its income from possessions of the United States, shall be treated as a foreign corporation.

(h) **Subsidiary formed to comply with foreign law.** In the case of a domestic corporation owning or controlling, directly or indirectly, 100 per centum of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such

country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this chapter as a domestic corporation.

(i) **Suspension of running of statute of limitations.** If a notice under section 272(a) in respect of a deficiency for any taxable year is mailed to a corporation, the suspension of the running of the statute of limitations, provided in section 277, shall apply in the case of corporations with which such corporation made a consolidated return for such taxable year.

(j) **Receivership cases.** If the common parent corporation of an affiliated group making a consolidated return would, if filing a separate return, be entitled to the benefits of section 13(e), the affiliated group shall be entitled to the benefits of such subsection. In all other cases the affiliated group making a consolidated return shall not be entitled to the benefits of such subsection, regardless of the fact that one or more of the corporations in the group are in bankruptcy or in receivership. (As amended June 29, 1939, 10 a. m. E. S. T., c. 247, Title II, § 210 (b), 53 Stat. 866.)

(k) **Allocation of income and deductions.**

For allocation of income and deductions of related trades or businesses, see section 45.

(53 Stat. 58, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 210 (b), 53 Stat. 866.)

Subsec. (j) was made inapplicable with respect to a taxable year beginning after December 31, 1939, by Act June 29, 1939, c. 247, § 210 (b), 53 Stat. 866.

Derived from Act May 28, 1938, c. 289, § 141, 52 Stat. 508.

Similar provisions. Acts June 22, 1936, c. 690, § 141, 49 Stat. 1698; May 10, 1934, c. 277, § 141, 48 Stat. 720, as amended by Act Aug. 30, 1935, c. 829, § 102 (b), 49 Stat. 1015; June 6, 1932, c. 209, § 141, 47 Stat. 213, as amended by Act June 16, 1933, c. 90, Title 2, § 218 (e), 48 Stat. 209; May 29, 1928, c. 852, §§ 141, 142, 45 Stat. 831, 832; Feb. 26, 1926, c. 27, § 240, 44 Stat. 46, as amended by Act May 29, 1928, c. 852, § 501 (a), 45 Stat. 869; June 2, 1924, c. 234, § 240, 43 Stat. 288; Nov. 23, 1921, c. 136, § 240, 42 Stat. 260, as amended by Act Sept. 19, 1922, c. 346, § 24, 42 Stat. 856; Feb. 24, 1919, c. 18, § 240, 40 Stat. 1081.

§ 142. **Fiduciary returns.—(a) Requirement of return.** Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe—

(1) Every individual having a net income for the taxable year of \$1,000 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of \$2,500 or over, if married and living with husband or wife;

(3) Every individual having a gross income for the taxable year of \$5,000 or over, regardless of the amount of his net income;

(4) Every estate the net income of which for the taxable year is \$1,000 or over;

(5) Every trust the net income of which for the taxable year is \$100 or over;

(6) Every estate or trust the gross income of which for the taxable year is \$5,000 or over, regardless of the amount of the net income; and

(7) Every estate or trust of which any beneficiary is a nonresident alien.

(b) **Joint fiduciaries.** Under such regulations as the Commissioner with the approval of the Secretary may prescribe a return made by one of two or more joint fiduciaries and filed in the office of the collector of the district where such fiduciary resides shall be sufficient compliance with the above requirement. Such fiduciary shall make oath (1) that he has sufficient knowledge of the affairs of the individual, estate, or trust for which the return is made, to enable him to make the return, and (2) that the return is, to the best of his knowledge and belief, true and correct.

(c) **Law applicable to fiduciaries.** Any fiduciary required to make a return under this chapter shall

be subject to all the provisions of law which apply to individuals. (53 Stat. 60.)

Derived from Act May 28, 1938, c. 289, § 142, 52 Stat. 510.

Similar provisions. Acts June 22, 1936, c. 690, § 142, 49 Stat. 1700, as amended by Act Aug. 26, 1937, c. 815, Title 4, § 402, 50 Stat. 829; May 10, 1934, c. 277, § 142, 48 Stat. 722; June 6, 1932, c. 209, § 142, 47 Stat. 214; May 29, 1928, c. 852, § 143, 45 Stat. 843; Feb. 26, 1926, c. 27, § 225, 44 Stat. 37; June 2, 1924, c. 234, § 225, 43 Stat. 280; Feb. 24, 1919, c. 18, § 225, 40 Stat. 1074; Sept. 8, 1916, c. 463, § 13 (c), 39 Stat. 770, as amended by Act Oct. 3, 1917, c. 63, § 1208, 40 Stat. 335.

§ 143. **Withholding of tax at source.—(a) Tax-free covenant bonds.—(1) Requirement of withholding.**

In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation, issued before January 1, 1934, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this chapter upon the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 per centum of the interest upon such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, if payable to an individual, a partnership, or a foreign corporation not engaged in trade or business within the United States and not having any office or place of business therein: *Provided*, That if the liability assumed by the obligor does not exceed 2 per centum of the interest, then the deduction and withholding shall be at the following rates: (A) 10 per centum in the case of a nonresident alien individual (except that such rate shall be reduced, in the case of a resident of a contiguous country, to such rate, not less than 5 per centum, as may be provided by treaty with such country), or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein and composed in whole or in part of nonresident aliens, (B) in the case of such a foreign corporation, 15 per centum, and (C) 2 per centum in the case of other individuals and partnerships: *Provided further*, That if the owners of such obligations are not known to the withholding agent the Commissioner may authorize such deduction and withholding to be at the rate of 2 per centum, or, if the liability assumed by the obligor does not exceed 2 per centum of the interest, then at the rate of 10 per centum.

(2) **Benefit of credits against net income.** Such deduction and withholding shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1 a signed notice in writing claiming the benefit of the credits provided in section 25 (b); nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Commissioner under section 215.

(3) **Income of obligor and obligee.** The obligor shall not be allowed a deduction for the payment of the tax imposed by this chapter, or any other tax paid pursuant to the tax-free covenant clause, nor shall such tax be included in the gross income of the obligee.

(b) **Nonresident aliens.** All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of interest (except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States and not having an office or place of business therein), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income (but only to the extent that any of the above items constitutes gross income from sources within the United States), of any nonresident alien individual, or of any partnership not engaged in trade or business within the United States and

not having any office or place of business therein and composed in whole or in part of nonresident aliens, shall (except in the cases provided for in subsection (a) of this section and except as otherwise provided in regulations prescribed by the Commissioner under section 215) deduct and withhold from such annual or periodical gains, profits, and income a tax equal to 10 per centum thereof, except that such rate shall be reduced, in the case of a nonresident alien individual a resident of a contiguous country, to such rate (not less than 5 per centum) as may be provided by treaty with such country: *Provided*, That no such deduction or withholding shall be required in the case of dividends paid by a foreign corporation unless (1) such corporation is engaged in trade or business within the United States or has an office or place of business therein, and (2) more than 85 per centum of the gross income of such corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of section 119: *Provided further*, That the Commissioner may authorize such tax to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent. Under regulations prescribed by the Commissioner, with the approval of the Secretary, there may be exempted from such deduction and withholding the compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals.

(c) **Return and payment.** Every person required to deduct and withhold any tax under this section shall make return thereof on or before March 15 of each year and shall on or before June 15, in lieu of the time prescribed in section 56, pay the tax to the official of the United States Government authorized to receive it. Every such person is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this section.

(d) **Income of recipient.** Income upon which any tax is required to be withheld at the source under this section shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

(e) **Tax paid by recipient.** If any tax required under this section to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed upon or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

(f) **Refunds and credits.** Where there has been an overpayment of tax under this section any refund or credit made under the provisions of section 322 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

(g) **Cross reference.**

For definition of "withholding agent", see section 3797 (a) (16).

(53 Stat. 60.)

Derived from Act May 28, 1938, c. 289, § 143, 52 Stat. 511. **Similar provisions.** Acts June 22, 1936, c. 690, § 143, 49 Stat. 1700; May 10, 1934, c. 277, § 143, 48 Stat. 723, as amended by Act Aug. 30, 1935, c. 829, § 102 (g), 49 Stat. 1016; June 6, 1932, c. 209, § 143, 47 Stat. 215; May 29, 1928, c. 852, § 144, 45 Stat. 883; Feb. 26, 1926, c. 27, §§ 221, 234, 270 (e), 44 Stat. 35, 41, 54; June 2, 1924, c. 234, §§ 221, 234, 270 (d), 43 Stat. 277, 283, 295; Nov. 23, 1921, c. 136, § 221, 42 Stat. 248; Feb. 24, 1919, c. 18, § 221, 40 Stat. 1072; Oct. 3, 1917, c. 63, § 3, 40 Stat. 301; Sept. 8, 1916, c. 463, §§ 8, 9, 13, 39 Stat. 761, 763, 770, as amended by Act Oct. 3, 1917, c. 63, § 1204, 1205, 1208, 40 Stat. 331, 332, 335; Oct. 3, 1913, c. 16, § II, subds. D, E, 38 Stat. 168, 169.

§ 144. **Payment of corporation income tax at source.** In the case of foreign corporations subject to taxation under this chapter not engaged in trade or business within the United States and not having any

office or place of business therein, there shall be deducted and withheld at the source in the same manner and upon the same items of income as is provided in section 143 a tax equal to 15 per centum thereof, except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country; and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section: *Provided*, That in the case of interest described in subsection (a) of that section (relating to tax-free covenant bonds) the deduction and withholding shall be at the rate specified in such subsection. (53 Stat. 62.)

Derived from Act May 28, 1938, c. 289, § 144, 52 Stat. 513. **Similar provisions.** Acts June 22, 1936, c. 690, § 144, 49 Stat. 1702; May 10, 1934, c. 277, § 144, 48 Stat. 729, as amended by Act Aug. 30, 1935, c. 829, § 102 (f), (i), 49 Stat. 1016; June 6, 1932, c. 209, § 144, 47 Stat. 216; May 20, 1928, c. 852, § 145, 45 Stat. 835; Feb. 26, 1926, c. 27, § 237, 44 Stat. 43; June 2, 1924, c. 234, § 237, 43 Stat. 285; Nov. 23, 1921, c. 136, § 237, 42 Stat. 258; Feb. 24, 1919, c. 18, § 237, 40 Stat. 1080.

§ 145. **Penalties—(a) Failure to file returns, submit information, or pay tax.** Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) **Failure to collect and pay over tax, or attempt to defeat or evade tax.** Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) **Person defined.** The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(d) **Cross reference.**

For penalties for failure to file information returns with respect to foreign personal holding companies and foreign corporations, see section 340.

(53 Stat. 62.)

Derived from Act May 28, 1938, c. 289, § 145, 52 Stat. 513.

Similar provisions. Acts June 22, 1936, c. 690, § 145, 49 Stat. 1703, as amended by Act Aug. 26, 1937, c. 815, Title II, § 207 (e), 50 Stat. 826; May 10, 1934, c. 277, § 145, 48 Stat. 724; June 6, 1932, c. 209, § 145, 47 Stat. 217; May 29, 1928, c. 852, § 146, 45 Stat. 835; Feb. 26, 1926, c. 27, § 1114, 44 Stat. 116; June 2, 1924, c. 234, § 1017, 43 Stat. 343; Nov. 23, 1921, c. 136, § 253, 42 Stat. 268; Feb. 24, 1919, c. 18, § 253, 40 Stat. 1085; Sept. 8, 1916, c. 463, §§ 14, 18, 39 Stat. 772, 775, as section 18 was amended by Act Oct. 3, 1917, c. 63, § 1209, 40 Stat. 1085; Oct. 22, 1914, c. 331, § 23, 38 Stat. 764; Oct. 3, 1913, c. 16, § II, subds. F, G, 38 Stat. 171, 177.

§ 146. **Closing by commissioner of taxable year—(a) Tax in jeopardy—(1) Departure of taxpayer or removal of property from United States.** If the Commissioner finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past

or the taxable year then current unless such proceedings be brought without delay, the Commissioner shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section the finding of the Commissioner, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design.

(2) **Corporation in liquidation.** If the Commissioner finds that the collection of the tax of a corporation for the current or last preceding taxable year will be jeopardized by the distribution of all or a portion of the assets of such corporation in the liquidation of the whole or any part of its capital stock, the Commissioner shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the last preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable.

(b) **Security for payment.** A taxpayer who is not in default in making any return or paying income, war-profits, or excess-profits tax under any Act of Congress may furnish to the United States, under regulations to be prescribed by the Commissioner, with the approval of the Secretary, security approved by the Commissioner that he will duly make the return next thereafter required to be filed and pay the tax next thereafter required to be paid. The Commissioner may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of this section, provided the taxpayer has paid in full all other income, war-profits, or excess-profits taxes due from him under any Act of Congress.

(c) **Same—exemption from section.** If security is approved and accepted pursuant to the provisions of this section and such further or other security with respect to the tax or taxes covered thereby is given as the Commissioner shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such respective taxes.

(d) **Citizens.** In the case of a citizen of the United States or of a possession of the United States about to depart from the United States the Commissioner may, at his discretion, waive any or all of the requirements placed on the taxpayer by this section.

(e) **Departure of alien.** No alien shall depart from the United States unless he first procures from the collector or agent in charge a certificate that he has complied with all the obligations imposed upon him by the income, war-profits, and excess-profits tax laws.

(f) **Addition to tax.** If a taxpayer violates or attempts to violate this section there shall, in addition to all other penalties, be added as part of the tax 25 per centum of the total amount of the tax or deficiency in the tax, together with interest at the rate of 6 per centum per annum from the time the tax became due. (53 Stat. 63.)

Derived from Act May 28, 1938, c. 289, § 146, 52 Stat. 513. Similar provisions. Acts June 22, 1936, c. 690, § 146, 49 Stat. 1703; May 10, 1934, c. 277, § 146, 48 Stat. 725; June 6, 1932, c. 209, § 146, 47 Stat. 217; May 29, 1928, c. 852, § 147, 45 Stat. 836; Feb. 26, 1926, c. 27, § 285, 44 Stat. 68; June 2, 1924, c. 234, § 282, 43 Stat. 302.

§ 147. **Information at source—(a) Payments of \$1,000 or more.** All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, making payment to another person, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments described in section 148 (a) or 149), of \$1,000 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by him with the approval of the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

(b) **Returns regardless of amount of payment.** Such returns may be required, regardless of amounts, (1) in the case of payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations, and (2) in the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by persons undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange.

(c) **Recipient to furnish name and address.** When necessary to make effective the provisions of this section the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

(d) **Obligations of United States.** The provisions of this section shall not apply to the payment of interest on obligations of the United States. (53 Stat. 64.)

Derived from Act May 28, 1938, c. 289, § 147, 52 Stat. 515. Similar provisions. Acts June 22, 1936, c. 690, § 147, 49 Stat. 1704; May 10, 1934, c. 277, § 147, 48 Stat. 726; June 6, 1932, c. 209, § 147, 47 Stat. 218; May 29, 1928, c. 852, § 148, 45 Stat. 836; Feb. 26, 1926, c. 27, § 256, 44 Stat. 50; June 2, 1924, c. 234, § 256, 43 Stat. 292; Nov. 23, 1921, c. 136, § 256, 42 Stat. 269; Feb. 24, 1919, c. 18, § 256, 40 Stat. 1086; Sept. 8, 1916, c. 463, § 28, as added by Act Oct. 3, 1917, c. 63, § 1211, 40 Stat. 336.

§ 148. **Information by corporations—(a) Dividend payments.** Every corporation shall, when required by the Commissioner, render a correct return, duly verified under oath, of its payments of dividends, stating the name and address of each shareholder, the number of shares owned by him, and the amount of dividends paid to him.

(b) **Profits declared as dividends.** Every corporation shall, when required by the Commissioner, furnish him a statement of such facts as will enable him to determine the portion of the earnings or profits of the corporation (including gains, profits, and income not taxed) accumulated during such periods as the Commissioner may specify, which have been distributed or ordered to be distributed, respectively, to its shareholders during such taxable years as the Commissioner may specify.

(c) **Accumulated earnings and profits.** When requested by the Commissioner, or any collector, every corporation shall forward to him a correct statement of accumulated earnings and profits and the names and addresses of the individuals or shareholders who would be entitled to the same if divided or distributed, and of the amounts that would be payable to each.

(d) **Contemplated dissolution or liquidation.** Every corporation shall, within thirty days after the adoption by the corporation of a resolution or plan for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Commissioner shall, with the approval of the Secretary, by regulations prescribe.

(e) **Distributions in liquidation.** Every corporation shall, when required by the Commissioner, render a correct return, duly verified under oath, of its distributions in liquidation, stating the name and address of each shareholder, the number and class of shares owned by him, and the amount paid to him or, if the distribution is in property other than money, the fair market value (as of the date the distribution is made) of the property distributed to him.

(f) **Compensation of officers and employees.** Under regulations prescribed by the Commissioner with the approval of the Secretary, every corporation subject to taxation under this chapter shall, in its return, submit a list of the names of all officers and employees of such corporation and the respective amounts paid to them during the taxable year of the corporation by the corporation as salary, commission, bonus, or other compensation for personal services rendered, if the aggregate amount so paid to the individual is in excess of \$75,000.

The Secretary shall compile from the returns made a list containing the names of, and the amounts paid to, each such officer and employee and the name of the paying corporation, and shall make such list available to the public. It shall be unlawful for any person to sell, offer for sale, or circulate, for any consideration whatsoever, any copy or reproduction of any list, or part thereof, authorized to be made public by this Act or by any prior Act relating to the publication of information derived from income-tax returns; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court: *Provided*, That nothing in this sentence shall be construed to be applicable with respect to any newspaper, or other periodical publication, entitled to admission to the mails as second-class mail matter. (53 Stat. 65, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title IV, § 407, 53 Stat. 884.)

Subsec. (f), last sentence, was added by Act June 29, 1939, cited to text.

Derived from Act May 28, 1938, c. 289, § 148, 52 Stat. 515.

Similar provisions. Acts June 22, 1936, c. 690, § 148, 49 Stat. 1705; May 10, 1934, c. 277, § 148, 48 Stat. 726; June 6, 1932, c. 209, § 148, 47 Stat. 218; May 29, 1928, c. 852, § 149, 45 Stat. 837; Feb. 26, 1926, c. 27, § 239, 254, 44 Stat. 45, 50; June 2, 1924, c. 234, §§ 220, 239, 254, 43 Stat. 277, 287, 292; Nov. 23, 1921, c. 136, §§ 239, 254, 42 Stat. 259, 269; Feb. 24, 1919, c. 18, §§ 239, 254, 40 Stat. 1081, 1085; Sept. 8, 1916, c. 463, §§ 13, 26, as added by Act Mar. 3, 1917, c. 159, § 402, 39 Stat. 1003, and amended by Act Oct. 3, 1917, c. 63, §§ 1208, 1210, 40 Stat. 335, 336; Oct. 3, 1913, c. 16, § II, G, 38 Stat. 175.

§ 149. Returns of brokers. Every person doing business as a broker shall, when required by the Commissioner, render a correct return duly verified under oath, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, showing the names of customers for whom such person has transacted any business, with such details as to the profits, losses, or other information which the Commissioner may require, as to each of such customers, as will enable the Commissioner to determine whether all income tax due on profits or gains of such customers has been paid. (53 Stat. 65.)

Derived from Act May 28, 1938, c. 289, § 149, 52 Stat. 516.

Similar provisions. Acts June 22, 1936, c. 690, § 149, 49 Stat. 1705; May 10, 1934, c. 277, § 149, 48 Stat. 727; June 6, 1932, c. 209, § 149, 47 Stat. 219; May 29, 1928, c. 852, § 150, 45 Stat. 837; Feb. 26, 1926, c. 27, § 255, 44 Stat. 50; June 2, 1924, c. 234, § 255, 43 Stat. 292; Nov. 23, 1921, c. 136, § 255, 42 Stat. 269; Feb. 24, 1919, c. 18, § 255, 40 Stat. 1085; Sept. 8, 1916, c. 463, § 27, as added by Act Oct. 3, 1917, c. 63, § 1211, 40 Stat. 336.

§ 150. Collection of foreign items. All persons undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner and shall be subject to such regulations enabling the Government to obtain the information required under this chapter as the Commissioner, with the approval of the Secretary, shall prescribe; and whoever knowingly

undertakes to collect such payments without having obtained a license therefor, or without complying with such regulations, shall be guilty of a misdemeanor and shall be fined not more than \$5,000 or imprisoned for not more than one year, or both. (53 Stat. 65.)

Derived from Act May 28, 1938, c. 289, § 150, 52 Stat. 516.
Similar provisions. Acts June 22, 1936, c. 690, § 150, 49 Stat. 1705; May 10, 1934, c. 277, § 150, 48 Stat. 727; June 6, 1932, c. 209, § 150, 47 Stat. 219; May 29, 1928, c. 852, § 151, 45 Stat. 838; Feb. 26, 1926, c. 27, § 259, 44 Stat. 52; June 2, 1924, c. 234, § 259, 43 Stat. 293; Nov. 23, 1921, c. 136, § 259, 42 Stat. 270; Feb. 24, 1919, c. 18, § 259, 40 Stat. 1087; Sept. 8, 1916, c. 463, § 9, 39 Stat. 763, as amended by Act Oct. 3, 1917, c. 63, § 1205, 40 Stat. 332; Oct. 3, 1913, c. 16, § II, E, 38 Stat. 171.

§ 151. Foreign personal holding companies.

For information returns by officers, directors, and large shareholders, with respect to foreign personal holding companies, see sections 338, 339, and 340.

For information returns by attorneys, accountants, and so forth, as to formation, and so forth, of foreign corporations, see section 3604.

(53 Stat. 66.)

Derived from Act May 28, 1938, c. 289, § 151, 52 Stat. 516.
Similar provisions. Acts June 22, 1936, c. 690, § 151, as added by Act Aug. 26, 1937, c. 815, Title II, § 207 (d), 50 Stat. 826.

§ 152. Pan-American trade corporations. If a domestic corporation engaged in the active conduct of a trade or business within the United States (hereinafter referred to as the "parent corporation") owns directly 100 per centum of the capital stock of one or more domestic corporations each of which is engaged solely in the active conduct of a trade or business in Central or South America (hereinafter referred to as a Pan-American trade corporation), such corporations (including the "parent corporation") shall be deemed to be an affiliated group of corporations within the meaning of section 141 of this chapter, provided that the following conditions are satisfied:

(1) At least 80 per centum of the gross income for the taxable year of the parent corporation is derived from sources other than royalties, rents, dividends, interest, annuities, and gains from the sale or exchange of stock or securities; and

(2) At least 90 per centum of the gross income for the taxable year of each of the Pan-American trade corporations is derived from sources other than royalties, rents, dividends, interest, annuities, and gains from the sale or exchange of stock or securities; and

(3) No part of the gross income for the taxable year of any of the Pan-American trade corporations is derived from sources within the United States. (Added June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 225, 53 Stat. 880.)

Section made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of Act June 29, 1939, cited to credit.

SUPPLEMENT E.—ESTATES AND TRUSTS

§ 161. Imposition of tax—(a) Application of tax. The taxes imposed by this chapter upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) **Computation and payment.** The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 166 (relating to revocable trusts) and section 167 (relating to income for benefit of the grantor).

(c) Cross reference.

For return made by beneficiary, see section 142.

(53 Stat. 66.)

Derived from Act May 28, 1938, c. 289, § 161, 52 Stat. 517. **Similar provisions.** Acts June 22, 1936, c. 690, § 161, 49 Stat. 1706; May 10, 1934, c. 277, § 161, 48 Stat. 727; June 6, 1932, c. 209, § 161, 47 Stat. 219; May 29, 1928, c. 852, § 161, 45 Stat. 838; Feb. 26, 1926, c. 27, § 219, 44 Stat. 32; June 2, 1924, c. 234, § 219, 43 Stat. 275; Nov. 23, 1921, c. 136, § 219, 42 Stat. 246; Feb. 24, 1919, c. 18, § 219, 40 Stat. 1071; Sept. 8, 1916, c. 463, § 2 [b], 39 Stat. 757, as amended by Act Oct. 3, 1917, c. 63, § 1200, 40 Stat. 329.

§ 162. Net income. The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(a) There shall be allowed as a deduction (in lieu of the deduction for charitable, etc., contributions authorized by section 23 (o)) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner specified in section 23 (o), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance or operation of a public cemetery not operated for profit;

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year;

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary. (53 Stat. 66.)

Derived from Act May 28, 1938, c. 289, § 162, 52 Stat. 517.

Similar provisions. Acts June 22, 1936, c. 690, § 162, 49 Stat. 1706; May 10, 1934, c. 277, § 162, 48 Stat. 728; June 6, 1932, c. 209, § 162, 47 Stat. 220; May 29, 1928, c. 852, § 162, 45 Stat. 838; Feb. 26, 1926, c. 27, § 219, 44 Stat. 32; June 2, 1924, c. 234, § 219, 43 Stat. 275; Nov. 23, 1921, c. 136, § 219, 42 Stat. 246; Feb. 24, 1919, c. 18, § 219, 40 Stat. 1071; Sept. 8, 1916, c. 463, § 2 [b], 39 Stat. 757, as amended by Act Oct. 3, 1917, c. 63, § 1200, 40 Stat. 329.

§ 163. Credits against net income—(a) Credits of estate or trust. (1) For the purpose of the normal tax and the surtax an estate shall be allowed the same personal exemption as is allowed to a single person under section 25 (b) (1), and a trust shall be allowed (in lieu of the personal exemption under section 25 (b) (1)) a credit of \$100 against net income.

(2) If no part of the income of the estate or trust is included in computing the net income of any legatee, heir, or beneficiary, then the estate or trust shall be allowed the same credits against net income for interest as are allowed by section 25 (a).

(b) Credits of beneficiary. If any part of the income of an estate or trust is included in computing the net income of any legatee, heir, or beneficiary, such legatee, heir, or beneficiary shall, for the purpose of the normal tax, be allowed as credits against net income, in addition to the credits allowed to him under section 25, his proportionate share of such

amounts of interest specified in section 25 (a) as are, under this Supplement, required to be included in computing his net income. Any remaining portion of such amounts specified in section 25 (a) shall, for the purpose of the normal tax, be allowed as credits to the estate or trust. (53 Stat. 67.)

Derived from Act May 28, 1938, c. 289, § 163, 52 Stat. 518.

Similar provisions. Acts June 22, 1936, c. 690, § 163, 49 Stat. 1707, as amended by Act Aug. 26, 1937, c. 815, Title IV, § 401, 50 Stat. 829; May 10, 1934, c. 277, § 163, 48 Stat. 728; June 6, 1932, c. 209, § 163, 47 Stat. 220; May 29, 1928, c. 852, § 163, 45 Stat. 839; Feb. 26, 1926, c. 27, § 219, 44 Stat. 32; June 2, 1924, c. 234, § 219, 43 Stat. 275; Nov. 23, 1921, c. 136, § 219, 42 Stat. 249; Feb. 24, 1919, c. 18, § 219, 40 Stat. 1071; Sept. 8, 1916, c. 463, § 2 [b], 39 Stat. 757, as amended by Act Oct. 3, 1917, c. 63, § 1200, 40 Stat. 329.

§ 164. Different taxable years. If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under section 162 (b), to include in computing his net income, shall be based upon the income of the estate or trust for any taxable year of the estate or trust (whether beginning on, before, or after January 1, 1939) ending within or with his taxable year. (53 Stat. 67.)

Derived from Act May 28, 1938, c. 289, § 164, 52 Stat. 518.

Similar provisions. Acts June 22, 1936, c. 690, § 164, 49 Stat. 1707; May 10, 1934, c. 277, § 164, 48 Stat. 729; June 6, 1932, c. 209, § 164, 47 Stat. 220; May 29, 1928, c. 852, § 164, 45 Stat. 839; Feb. 26, 1926, c. 27, § 219, 44 Stat. 32; June 2, 1924, c. 234, § 219, 43 Stat. 275; Nov. 23, 1921, c. 136, § 219, 42 Stat. 246; Feb. 24, 1919, c. 18, § 219, 40 Stat. 1071; Sept. 8, 1916, c. 463, § 2 [b], 39 Stat. 757, as amended by Act Oct. 3, 1917, c. 63, § 1200, 40 Stat. 329.

§ 165. Employees' trusts—(a) Exemption from tax. A trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of some or all of his employees—

(1) if contributions are made to the trust by such employer, or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees,

shall not be taxable under section 161, but the amount actually distributed or made available to any distributee shall be taxable to him in the year in which so distributed or made available to the extent that it exceeds the amounts paid in by him. Such distributees shall for the purpose of the normal tax be allowed as credits against net income such part of the amount so distributed or made available as represents the items of interest specified in section 25 (a).

(b) Taxable year beginning prior to January 1, 1940. The provisions of clause (2) of subsection (a) shall not apply to a taxable year beginning prior to January 1, 1940. (53 Stat. 67, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 218, 53 Stat. 876.)

Subsec. (a) was amended and subsec. (b) was added by Act June 29, 1939, cited to text, and made applicable only with respect to taxable years beginning after December 31, 1939 by § 229 of said act.

Prior to said amendment section read as follows: "A trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of some or all of his employees—

(1) if contributions are made to the trust by such employer, or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees,

shall not be taxable under section 161, but the amount actually distributed or made available to any distributee shall be taxable to him in the year in which so distributed

or made available to the extent that it exceeds the amounts paid in by him. Such distributees shall for the purpose of the normal tax be allowed as credits against net income such part of the amount so distributed or made available as represents the items of interest specified in section 25 (a)."

Derived from Act May 28, 1938, c. 289, § 165, 52 Stat. 518.

Similar provisions. Acts June 22, 1936, c. 690, § 165, 49 Stat. 1707; May 10, 1934, c. 277, § 165, 48 Stat. 729; June 6, 1932, c. 209, § 165, 47 Stat. 221; May 29, 1928, c. 852, § 165, 45 Stat. 839; Feb. 26, 1926, c. 27, § 219, 44 Stat. 32; June 2, 1924, c. 234, § 219, 43 Stat. 275; Nov. 23, 1921, c. 136, § 219, 42 Stat. 246; Feb. 24, 1919, c. 18, § 219, 40 Stat. 1071; Sept. 8, 1916, c. 463, § 2 [b], 39 Stat. 757, as amended by Act Oct. 3, 1917, c. 63, § 1200, 40 Stat. 329.

§ 166. Revocable trusts. Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(1) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or

(2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, then the income of such part of the trust shall be included in computing the net income of the grantor. (53 Stat. 68.)

Derived from Act May 28, 1938, c. 289, § 166, 52 Stat. 519.

Similar provisions. Acts June 22, 1936, c. 690, § 166, 49 Stat. 1707; May 10, 1934, c. 277, § 166, 48 Stat. 729; June 6, 1932, c. 209, § 166, 47 Stat. 221; May 29, 1928, c. 852, § 166, 45 Stat. 840; Feb. 26, 1926, c. 27, § 219, 44 Stat. 32; June 2, 1924, c. 234, § 219, 43 Stat. 275; Nov. 23, 1921, c. 136, § 219, 42 Stat. 249; Feb. 24, 1919, c. 18, § 219, 40 Stat. 1071; Sept. 8, 1916, c. 463, § 2 [b], 39 Stat. 757, as amended by Act Oct. 3, 1917, c. 63, § 1200, 40 Stat. 329.

§ 167. Income for benefit of grantor. (a) Where any part of the income of a trust—

(1) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(3) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in section 23 (o), relating to the so-called "charitable contribution" deduction);

then such part of the income of the trust shall be included in computing the net income of the grantor.

(b) As used in this section the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question." (53 Stat. 68.)

Derived from Act May 28, 1938, c. 289, § 167, 52 Stat. 519.

Similar provisions. Acts June 22, 1936, c. 690, § 167, 49 Stat. 1707; May 10, 1934, c. 277, § 167, 48 Stat. 729; June 6, 1932, c. 209, § 167, 47 Stat. 221; May 29, 1928, c. 852, § 167, 45 Stat. 840; Feb. 26, 1926, c. 27, § 219, 44 Stat. 32; June 2, 1924, c. 234, § 219, 43 Stat. 275; Nov. 23, 1921, c. 136, § 219, 42 Stat. 246; Feb. 24, 1919, c. 18, § 219, 40 Stat. 1071; Sept. 8, 1916, c. 463, § 2 [b], 39 Stat. 757, as amended by Act Oct. 3, 1917, c. 63, § 1200, 40 Stat. 329.

§ 168. Taxes of foreign countries and possessions of United States. The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as credit against the tax of the beneficiary of an estate or trust to the extent provided in section 131. (53 Stat. 68.)

Derived from Act May 28, 1938, c. 289, § 168, 52 Stat. 519.

Similar provisions. Acts June 22, 1936, c. 690, § 168, 49 Stat. 1708; May 10, 1934, c. 277, § 168, 48 Stat. 730; June 6, 1932, c. 209, § 170, 47 Stat. 222; May 29, 1928, c. 852, § 170, 45 Stat. 840.

§ 169. Common trust funds—(a) Definitions. The term "common trust fund" means a fund maintained by a bank (as defined in section 104)—

(1) exclusively for the collective investment and re-investment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and

(2) in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System pertaining to the collective investment of trust funds by national banks.

(b) Taxation of common trust funds. A common trust fund shall not be subject to taxation under this chapter, subchapters A or B of chapter 2, or section 105 or 106 of the Revenue Act of 1935, 49 Stat. 1017, 1019, or chapter 6 and for the purposes of such chapters and subchapters shall not be considered a corporation.

(c) Income of participants in fund—(1) Inclusions in net income. Each participant in the common trust fund in computing its net income shall include, whether or not distributed and whether or not distributable—

(A) As a part of its short-term capital gains or losses, its proportionate share of the net short-term capital gain or loss of the common trust fund;

(B) As a part of its long-term capital gains or losses, its proportionate share of the net long-term capital gain or loss of the common trust fund;

(C) Its proportionate share of the ordinary net income or the ordinary net loss of the common trust fund, computed as provided in subsection (d).

(2) Credit for partially exempt interest. The proportionate share of each participant in the amount of interest specified in section 25 (a) received by the common trust fund shall for the purposes of this Supplement be considered as having been received by such participant as such interest.

(d) Computation of common trust fund income. The net income of the common trust fund shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) There shall be segregated the short-term capital gains and losses and the long-term capital gains and losses, and the net short-term capital gain or loss and the net long-term capital gain or loss shall be computed;

(2) After excluding all items of either short-term or long-term capital gain or loss, there shall be computed—

(A) An ordinary net income which shall consist of the excess of the gross income over the deductions; or

(B) An ordinary net loss which shall consist of the excess of the deductions over the gross income;

(3) The so-called "charitable contribution" deduction allowed by section 23 (o) shall not be allowed.

(e) Admission and withdrawal. No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

(f) Returns by bank. Every bank (as defined in section 104) maintaining a common trust fund shall make a return under oath for each taxable year, stating specifically, with respect to such fund, the items of gross income and the deductions allowed by this chapter, and shall include in the return the names and addresses of the participants who would be entitled to share in the net income if distributed and the amount of the proportionate share of each participant. The return shall be sworn to as in the case of a return filed by the bank under section 52.

(g) Different taxable years of common trust fund and participant. If the taxable year of the common trust fund is different from that of a participant, the inclusions with respect to the net income of the common trust fund, in computing the net income of the participant for its taxable year shall be based upon the net income of the common trust fund for any

taxable year of the common trust fund (whether beginning on, before, or after January 1, 1939) ending within or with the taxable year of the participant. (53 Stat. 68.)

Derived from Act May 28, 1938, c. 289, § 169 (a)–(g) (1), 52 Stat. 519.

Similar provisions. Acts June 22, 1936, c. 690, § 169, 49 Stat. 1708.

§ 170. Net operating losses. The benefit of the deduction for net operating losses allowed by section 23 (s) shall be allowed to estates and trusts under regulations prescribed by the Commissioner with the approval of the Secretary. The benefit of such deduction shall not be allowed to a common trust fund, but shall be allowed to the participants in the common trust fund under regulations prescribed by the Commissioner with the approval of the Secretary. (Added June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 211 (c), 53 Stat. 868.)

SUPPLEMENT F.—PARTNERSHIPS

§ 181. Partnership not taxable. Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. (53 Stat. 69.)

Derived from Act May 28, 1938, c. 289, § 181, 52 Stat. 521. Similar provisions. Acts June 22, 1936, c. 690, § 181, 49 Stat. 1709; May 10, 1934, c. 277, § 181, 48 Stat. 730; June 6, 1932, c. 209, § 181, 47 Stat. 222; May 29, 1928, c. 852, § 181, 45 Stat. 841; Feb. 26, 1926, c. 27, § 218, 44 Stat. 32; June 2, 1924, c. 234, § 218, 43 Stat. 275; Nov. 23, 1921, c. 136, § 218, 42 Stat. 245; Feb. 24, 1919, c. 18, § 218, 40 Stat. 1070; Sept. 8, 1916, c. 463, § 8, 39 Stat. 761, as amended by Act Oct. 3, 1917, c. 63, § 1204, 40 Stat. 331; Oct. 3, 1913, c. 16, § II, D, 38 Stat. 168.

§ 182. Tax of partners. In computing the net income of each partner, he shall include, whether or not distribution is made to him—

(a) As a part of his short-term capital gains or losses, his distributive share of the net short-term capital gain or loss of the partnership.

(b) As a part of his long-term capital gains or losses, his distributive share of the net long-term capital gain or loss of the partnership.

(c) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183 (b). (53 Stat. 69.)

Derived from Act May 28, 1938, c. 289, § 182, 52 Stat. 521. Similar provisions. Acts June 22, 1936, c. 690, § 182, 49 Stat. 1709; May 10, 1934, c. 277, § 182, 48 Stat. 730; June 6, 1932, c. 209, § 182, 47 Stat. 222, as amended by Act June 16, 1933, c. 90, Title II, § 218 (d), 48 Stat. 209; May 29, 1928, c. 852, § 182, 45 Stat. 841; Feb. 26, 1926, c. 27, § 218, 44 Stat. 32; June 2, 1924, c. 234, § 218, 43 Stat. 275; Nov. 23, 1921, c. 136, § 218, 42 Stat. 245; Feb. 24, 1919, c. 18, § 218, 40 Stat. 1070.

§ 183. Computation of partnership income—(a) General rule. The net income of the partnership shall be computed in the same manner and on the same basis as in the case of an individual, except as provided in subsections (b) and (c).

(b) Segregation of items—(1) Capital gains and losses. There shall be segregated the short-term capital gains and losses and the long-term capital gains and losses, and the net short-term capital gain or loss and the net long-term capital gain or loss shall be computed.

(2) Ordinary net income or loss. After excluding all items of either short-term or long-term capital gain or loss, there shall be computed—

(A) An ordinary net income which shall consist of the excess of the gross income over the deductions; or

(B) An ordinary net loss which shall consist of the excess of the deductions over the gross income.

(c) Charitable contributions. In computing the net income of the partnership the so-called "charitable contribution" deduction allowed by section 23 (o) shall not be allowed; but each partner shall be considered as having made payment, within his taxable year, of his distributive portion of any contribution or gift, payment of which was made by the partnership within its taxable year, of the character which would be allowed

to the partnership as a deduction under such section if this subsection had not been enacted. (53 Stat. 70.)

Derived from Act May 28, 1938, c. 289, § 183, 52 Stat. 521. Similar provisions. Acts June 22, 1936, c. 690, § 183, 49 Stat. 1709; May 10, 1934, c. 277, § 183, 48 Stat. 730; June 6, 1932, c. 209, § 183, 47 Stat. 222; May 29, 1928, c. 852, § 183, 45 Stat. 841; Feb. 26, 1926, c. 27, § 218, 44 Stat. 32; June 2, 1924, c. 234, § 218, 43 Stat. 275; Nov. 23, 1921, c. 136, § 218, 42 Stat. 245; Feb. 24, 1919, c. 18, § 218, 40 Stat. 1070.

§ 184. Credits against net income. The partner shall, for the purpose of the normal tax, be allowed as a credit against his net income, in addition to the credits allowed to him under section 25, his proportionate share of such amounts (not in excess of the net income of the partnership) of interest specified in section 25 (a) as are received by the partnership. (53 Stat. 70.)

Derived from Act May 28, 1938, c. 289, § 184, 52 Stat. 521.

Similar provisions. Acts June 22, 1936, c. 690, § 184, 49 Stat. 1709; May 10, 1934, c. 277, § 184, 48 Stat. 730; June 6, 1932, c. 209, § 184, 47 Stat. 223; May 29, 1928, c. 852, § 184, 45 Stat. 841; Feb. 26, 1926, c. 27, § 218, 44 Stat. 32; June 2, 1924, c. 234, § 218, 43 Stat. 275; Nov. 23, 1921, c. 136, § 218, 42 Stat. 245; Feb. 24, 1919, c. 18, § 218, 40 Stat. 1070.

§ 185. Earned income. In the case of the members of a partnership the proper part of each share of the net income which consists of earned income shall be determined under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary and shall be separately shown in the return of the partnership. (53 Stat. 70.)

Derived from Act May 28, 1938, c. 289, § 185, 52 Stat. 522. Similar provisions. Acts June 22, 1936, c. 690, § 185, 49 Stat. 1709; May 10, 1934, c. 277, § 185, 48 Stat. 730; June 6, 1932, c. 209, § 185, 47 Stat. 223; May 29, 1928, c. 852, § 185, 45 Stat. 841; Feb. 26, 1926, c. 27, § 209, 44 Stat. 20; June 2, 1924, c. 234, § 209, 43 Stat. 263.

§ 186. Taxes of foreign countries and possessions of United States. The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of the member of a partnership to the extent provided in section 131. (53 Stat. 70.)

Derived from Act May 28, 1938, c. 289, § 186, 52 Stat. 522. Similar provisions. Acts June 22, 1936, c. 690, § 186, 49 Stat. 1709; May 10, 1934, c. 277, § 186, 48 Stat. 730; June 6, 1932, c. 209, § 188, 47 Stat. 223; May 29, 1928, c. 852, § 188, 45 Stat. 842.

§ 187. Partnership returns. Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners. (53 Stat. 70.)

Derived from Act May 28, 1938, c. 289, § 187, 52 Stat. 522. Similar provisions. Acts June 22, 1936, c. 690, § 187, 49 Stat. 709; May 10, 1934, c. 277, § 187, 48 Stat. 730; June 6, 1932, c. 209, § 189, 47 Stat. 223; May 29, 1928, c. 852, § 189, 45 Stat. 842; Feb. 26, 1926, c. 27, § 224, 44 Stat. 37; June 2, 1924, c. 234, § 224, 43 Stat. 280; Nov. 23, 1921, c. 136, § 224, 42 Stat. 250; Feb. 24, 1919, c. 18, § 224, 40 Stat. 1074; Sept. 8, 1916, c. 463, § 8, 39 Stat. 761, as amended by Act Oct. 3, 1917, c. 63, § 1204, 40 Stat. 331.

§ 188. Different taxable years of partner and partnership. If the taxable year of a partner is different from that of the partnership, the inclusions with respect to the net income of the partnership, in computing the net income of the partner for his taxable year, shall be based upon the net income of the partnership for any taxable year of the partnership (whether beginning on, before, or after January 1, 1939) ending within or with the taxable year of the partner. (53 Stat. 71.)

Derived from Act May 28, 1938, c. 289, § 188 (a), 52 Stat. 522.

Similar provisions. Acts June 22, 1936, c. 690, § 188, 49 Stat. 1710; May 10, 1934, c. 277, § 182, 48 Stat.

730, 731; June 6, 1932, c. 209, § 182, 47 Stat. 222, as amended by Act June 16, 1933, c. 90, Title II, § 218 (d), 48 Stat. 209; May 29, 1928, c. 852, § 182, 45 Stat. 840; Feb. 26, 1926, c. 27, §§ 207, 218, 44 Stat. 18, 32; June 2, 1924, c. 234, §§ 207, 218, 43 Stat. 261, 275.

§ 189. **Net operating losses.** The benefit of the deduction for net operating losses allowed by section 23 (s) shall not be allowed to a partnership but shall be allowed to the members of the partnership under regulations prescribed by the Commissioner with the approval of the Secretary. (Added June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 211 (d), 53 Stat. 868.)

SUPPLEMENT G.—INSURANCE COMPANIES

§ 201. **Tax on life insurance companies—(a) Definition.** When used in this chapter the term "life insurance company" means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds.

(b) **Imposition of tax—(1) In general.** In lieu of the tax imposed by sections 13 and 14, there shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every life insurance company a tax at the rates provided in section 13 or section 14 (b).

(2) **Normal-tax net income of foreign life insurance companies.** In the case of a foreign life insurance company, the normal-tax net income shall be an amount which bears the same ratio to the normal-tax net income, computed without regard to this paragraph, as the reserve funds required by law and held by it at the end of the taxable year upon business transacted within the United States bear to the reserve funds held by it at the end of the taxable year upon all business transacted.

(3) **No United States insurance business.** Foreign life insurance companies not carrying on an insurance business within the United States and holding no reserve funds upon business transacted within the United States, shall not be taxable under this section but shall be taxable as other foreign corporations. (53 Stat. 71, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 203, 53 Stat. 865.)

Subsec. (b) was amended by Act June 29, 1939, cited to credit, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsection (b) read as follows:

"(b) **Imposition of tax—(1) In general.** In lieu of the tax imposed by sections 13 and 14, there shall be levied, collected, and paid for each taxable year upon the special class net income of every life insurance company a tax of 16½ per centum of the amount thereof.

"(2) **Special class net income of foreign life insurance companies.** In the case of a foreign life insurance company, the special class net income shall be an amount which bears the same ratio to the special class net income, computed without regard to this paragraph, as the reserve funds required by law and held by it at the end of the taxable year upon business transacted within the United States bear to the reserve funds held by it at the end of the taxable year upon all business transacted.

"(3) **No United States insurance business.** Foreign life insurance companies not carrying on an insurance business within the United States and holding no reserve funds upon business transacted within the United States, shall not be taxable under this section but shall be taxable as other foreign corporations."

Derived from Act May 28, 1938, c. 289, § 201, 52 Stat. 522. **Similar provisions.** Acts June 22, 1936, c. 690, § 201, 49 Stat. 1710; May 10, 1934, c. 277, § 201, 48 Stat. 731, as amended by Act Aug. 30, 1935, c. 829, § 103, 49 Stat. 1017; June 6, 1932, c. 209, § 201, 47 Stat. 222; May 29, 1928, c. 852, § 201, 45 Stat. 842; Feb. 26, 1926, c. 27, §§ 242, 243, 44 Stat. 47; June 2, 1924, c. 234, §§ 242, 243, 43 Stat. 288, 289; Nov. 23, 1921, c. 136, §§ 242, 243, 42 Stat. 261; Sept. 8, 1916, c. 463, § 10, 39 Stat. 765, as amended by Act Oct. 3, 1917, c. 63, § 1206, 40 Stat. 333; Oct. 3, 1913, c. 16, § 11, G. 38 Stat. 172.

§ 202. **Gross income of life insurance companies—(a) Gross income defined—(1) In general.** In the case of a life insurance company the term "gross income" means the gross amount of income received during the taxable year from interest, dividends, and rents.

(2) **Cross reference.**

For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

(b) **Reserve funds required by law, defined.** The term "reserve funds required by law" includes, in the case of assessment insurance, sums actually deposited by any company or association with State or Territorial officers pursuant to law as guaranty or reserve funds, and any funds maintained under the charter or articles of incorporation of the company or association exclusively for the payment of claims arising under certificates of membership or policies issued upon the assessment plan and not subject to any other use. (53 Stat. 71.)

Derived from Act May 28, 1938, c. 289, § 202, 52 Stat. 523. **Similar provisions.** Acts June 22, 1936, c. 690, § 202, 49 Stat. 1710; May 10, 1934, c. 277, § 202, 48 Stat. 731; June 6, 1932, c. 209, § 202, 47 Stat. 224; May 29, 1928, c. 852, § 202, 45 Stat. 842; Feb. 26, 1926, c. 27, § 244, 44 Stat. 47; June 2, 1924, c. 234, § 244, 43 Stat. 289; Nov. 23, 1921, c. 136, § 244, 42 Stat. 261.

§ 203. **Net income of life insurance companies—(a) General rule.** In the case of a life insurance company the term "net income" means the gross income less—

(1) **Tax-free interest.** The amount of interest received during the taxable year which under section 22 (b) (4) is excluded from gross income;

(2) **Reserve funds.** An amount equal to 4 per centum of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3¾ per centum shall be substituted for 4 per centum. Life insurance companies issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, shall be allowed, in addition to the above, a deduction of 3¾ per centum of the mean of such reserve funds (not required by law) held at the beginning and end of the taxable year, as the Commissioner finds to be necessary for the protection of the holders of such policies only;

(3) **Reserve for dividends.** An amount equal to 2 per centum of any sums held at the end of the taxable year as a reserve for dividends (other than dividends payable during the year following the taxable year) the payment of which is deferred for a period of not less than five years from the date of the policy contract;

(4) **Investment expenses.** Investment expenses paid during the taxable year: *Provided*, That if any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed one-fourth of 1 per centum of the book value of the mean of the invested assets held at the beginning and end of the taxable year;

(5) **Real estate expenses.** Taxes and other expenses paid during the taxable year exclusively upon or with respect to the real estate owned by the company, not including taxes assessed against local benefits of a kind tending to increase the value of the property assessed, and not including any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property. The deduction allowed by this paragraph shall be allowed in the case of taxes imposed upon a shareholder of a company upon his interest as shareholder, which are paid by the company without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes;

(6) **Depreciation.** A reasonable allowance, as provided in section 23 (l), for the exhaustion, wear and tear of property, including a reasonable allowance for obsolescence; and

(7) **Interest.** All interest paid within the taxable year on its indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer), the interest upon which is wholly exempt from taxation under this chapter.

(8) The amount of the net operating loss deduction provided in section 23 (s). (As amended June 29,

1939, 10 p. m. E. S. T., c. 247, Title II, § 211 (e) (1), 53 Stat. 868.)

(b) **Rental value of real estate.** The deduction under subsection (a) (5) or (6) of this section on account of any real estate owned and occupied in whole or in part by a life insurance company, shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this subsection) as the rental value of the space not so occupied bears to the rental value of the entire property. (53 Stat. 71, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 211 (e) (1), 53 Stat. 868.)

Subsec. (a), par. (8) was added by Act June 29, 1939, cited to credit.

Derived from Act May 28, 1938, c. 289, § 203, 52 Stat. 523.

Similar provisions. Acts June 22, 1936, c. 690, § 203, 49 Stat. 1710; May 10, 1934, c. 277, § 203, 48 Stat. 732; June 6, 1932, c. 209, § 203, 47 Stat. 224; May 29, 1928, c. 852, § 203, 45 Stat. 842; Feb. 26, 1926, c. 27, § 245, 44 Stat. 47; June 2, 1924, c. 234, § 245, 43 Stat. 289; Nov. 23, 1921, c. 136, § 245, 42 Stat. 261, as amended by Act Sept. 19, 1922, c. 346, § 27, 42 Stat. 856.

§ 204. **Insurance companies other than life or mutual—(a) Imposition of tax—(1) In general.** In lieu of the tax imposed by sections 13 and 14, there shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every insurance company (other than a life or mutual insurance company) a tax at the rates provided in section 13 or section 14 (b).

(2) **Normal-tax net income of foreign companies.** In the case of a foreign insurance company (other than a life or mutual insurance company), the normal-tax net income shall be the net income from sources within the United States minus the sum of—

(A) **Interest on obligations of the United States and its instrumentalities.** The credit provided in section 26 (a).

(B) **Dividends received.** The credit provided in section 26 (b).

(3) **No United States insurance business.** Foreign insurance companies not carrying on an insurance business within the United States shall not be taxable under this section but shall be taxable as other foreign corporations. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 204, 53 Stat. 865.)

(b) **Definition of income, etc.** In the case of an insurance company subject to the tax imposed by this section—

(1) **Gross income.** "Gross income" means the sum of (A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners, and (B) gain during the taxable year from the sale or other disposition of property, and (C) all other items constituting gross income under section 22;

(2) **Net income.** "Net income" means the gross income as defined in paragraph (1) of this subsection less the deductions allowed by subsection (c) of this section;

(3) **Investment income.** "Investment income" means the gross amount of income earned during the taxable year from interest, dividends, and rents, computed as follows:

To all interest, dividends and rents received during the taxable year, add interest, dividends and rents due and accrued at the end of the taxable year, and deduct all interest, dividends and rents due and accrued at the end of the preceding taxable year;

(4) **Underwriting income.** "Underwriting income" means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred;

(5) **Premiums earned.** "Premiums earned on insurance contracts during the taxable year" means an amount computed as follows:

From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance.

To the result so obtained add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable year;

(6) **Losses incurred.** "Losses incurred" means losses incurred during the taxable year on insurance contracts, computed as follows:

To losses paid during the taxable year, add salvage and reinsurance recoverable outstanding at the end of the preceding taxable year, and deduct salvage and reinsurance recoverable outstanding at the end of the taxable year. To the result so obtained add all unpaid losses outstanding at the end of the taxable year and deduct unpaid losses outstanding at the end of the preceding taxable year;

(7) **Expenses incurred.** "Expenses incurred" means all expenses shown on the annual statement approved by the National Convention of Insurance Commissioners, and shall be computed as follows:

To all expenses paid during the taxable year add expenses unpaid at the end of the taxable year and deduct expenses unpaid at the end of the preceding taxable year. For the purpose of computing the net income subject to the tax imposed by this section there shall be deducted from expenses incurred as defined in this paragraph all expenses incurred which are not allowed as deductions by subsection (c) of this section.

(c) **Deductions allowed.** In computing the net income of an insurance company subject to the tax imposed by this section there shall be allowed as deductions:

(1) All ordinary and necessary expenses incurred, as provided in section 23 (a);

(2) All interest as provided in section 23 (b);

(3) Taxes as provided in section 23 (c);

(4) Losses incurred as defined in subsection (b) (6) of this section;

(5) Subject to the limitation contained in section 117 (d), losses sustained during the taxable year from the sale or other disposition of property;

(6) Bad debts in the nature of agency balances and bills receivable ascertained to be worthless and charged off within the taxable year;

(7) The amount of interest earned during the taxable year which under section 22 (b) (4) is excluded from gross income;

(8) A reasonable allowance for the exhaustion, wear and tear of property, as provided in section 23 (i);

(9) Charitable, and so forth, contributions, as provided in section 23 (q);

(10) Deductions (other than those specified in this subsection) as provided in section 23. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 226 (a), 53 Stat. 881.)

(d) **Deductions of foreign corporations.** In the case of a foreign corporation the deductions allowed in this section shall be allowed to the extent provided in Supplement I in the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein.

(e) **Double deductions.** Nothing in this section shall be construed to permit the same item to be twice deducted. (53 Stat. 72, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, §§ 204, 226, 53 Stat. 865, 881.)

Subsec. (a) was amended by Act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsection read as follows:

"(a) **Imposition of tax—(1) In general.** In lieu of the tax imposed by sections 13 and 14, there shall be levied, collected, and paid for each taxable year upon the special class net income of every insurance company (other than a life or mutual insurance company) a tax of 16½ per centum of the amount thereof.

"(2) **Special class net income of foreign companies.** In the case of a foreign insurance company (other than a life or mutual insurance company), the special class net income shall be the net income from sources within the United States minus the sum of—

"(A) **Interest on obligations of the United States and its instrumentalities.** The credit provided in section 26 (a).

"(B) **Dividends received.** The credit provided in section 26 (b).

"(3) **No United States insurance business.** Foreign insurance companies not carrying on an insurance business within the United States shall not be taxable under this section but shall be taxable as other foreign corporations."

Subsec. (c), par. (10) was amended by Act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 226 (b) of said act.

Derived from Act May 28, 1938, c. 289, § 204, 52 Stat. 524. **Similar provisions.** Acts June 22, 1936, c. 690, § 204, 49 Stat. 1711; May 10, 1934, c. 277, § 204, 48 Stat. 733, as amended by Act Aug. 30, 1935, c. 829, §§ 102 (d), 104, 49 Stat. 1016, 1017; June 6, 1932, c. 209, § 204, 47 Stat. 225; May 29, 1928, c. 852, § 204, 45 Stat. 844; Feb. 26, 1926, c. 27, §§ 246, 247, 44 Stat. 48, 49; June 2, 1924, c. 234, §§ 246, 247, 43 Stat. 290, 291; Nov. 23, 1921, c. 136, § 246, 42 Stat. 262.

§ 205. **Taxes of foreign countries and possessions of United States.** The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of a domestic insurance company subject to the tax imposed by section 201, 204, or 207, to the extent provided in the case of a domestic corporation in section 131, and in the case of the tax imposed by section 201 or 204 "net income" as used in section 131 means the net income as defined in this Supplement. (53 Stat. 74.)

Derived from Act May 28, 1938, c. 289, § 205, 52 Stat. 526. **Similar provisions.** Acts June 22, 1936, c. 690, § 205, 49 Stat. 1713; May 10, 1934, c. 277, § 205, 48 Stat. 735; June 6, 1932, c. 209, § 206, 47 Stat. 227; May 29, 1928, c. 852, § 206, 45 Stat. 846; Feb. 26, 1926, c. 27, § 238, 44 Stat. 44; June 2, 1924, c. 234, § 238, 43 Stat. 286; Nov. 23, 1921, c. 136, § 238, 42 Stat. 258, as amended by Act Sept. 19, 1922, c. 346, § 23, 42 Stat. 586; Feb. 24, 1919, c. 18, § 238, 40 Stat. 1080.

§ 206. **Computation of gross income.** The gross income of insurance companies subject to the tax imposed by section 201 or 204 shall not be determined in the manner provided in section 119. (53 Stat. 74.)

Derived from Act May 28, 1938, c. 289, § 206, 52 Stat. 526. **Similar provisions.** Acts June 22, 1936, c. 690, § 206, 49 Stat. 1713; May 10, 1934, c. 277, § 206, 48 Stat. 735; June 6, 1932, c. 209, § 207, 47 Stat. 227; May 29, 1928, c. 852, § 207, 45 Stat. 846; Feb. 26, 1926, c. 27, § 233, 44 Stat. 41; June 2, 1924, c. 234, § 233, 43 Stat. 283; Nov. 23, 1921, c. 136, § 233, 42 Stat. 254; Feb. 24, 1919, c. 18, § 233, 40 Stat. 1077.

§ 207. **Mutual insurance companies other than life—**
(a) **Imposition of tax—**(1) **In general.** There shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every mutual insurance company (other than a life insurance company) a tax at the rates provided in section 13 or section 14 (b).

(2) **Foreign corporations.** The tax imposed by paragraph (1) shall apply to foreign corporations as well as domestic corporations; but foreign insurance companies not carrying on an insurance business within the United States shall be taxable as other foreign corporations. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 205, 53 Stat. 865.)

(b) **Gross income.** Mutual marine-insurance companies shall include in gross income the gross premiums collected and received by them less amounts paid for reinsurance.

(c) **Deductions.** In addition to the deductions allowed to corporations by section 23 the following deductions to insurance companies shall also be allowed, unless otherwise allowed—

(1) **Mutual insurance companies other than life insurance.** In the case of mutual insurance companies other than life insurance companies—

(A) the net addition required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies the actual deposit of sums with State or Territorial officers pursuant to law as additions to guarantee or reserve funds); and

(B) the sums other than dividends paid within the taxable year on policy and annuity contracts.

(2) **Mutual marine insurance companies.** In the case of mutual marine insurance companies, in addition to the deductions allowed in paragraph (1) of this subsection, unless otherwise allowed, amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment and the payment thereof;

(3) **Mutual insurance companies other than life and marine.** In the case of mutual insurance companies (including interinsurers and reciprocal underwriters, but not including mutual life or mutual marine insurance companies) requiring their members to make premium deposits to provide for losses and expenses, the amount of premium deposits returned to their policyholders and the amount of premium deposits retained for the payment of losses, expenses, and reinsurance reserves. (53 Stat. 74, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 205, 53 Stat. 865.)

Subsec. (a) was amended by Act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939 by § 229 of said act. Prior to said amendment subsection (a) read as follows:

"(a) **Imposition of tax—**(1) **In general.** There shall be levied, collected, and paid for each taxable year upon the special class net income of every mutual insurance company (other than a life insurance company) a tax equal to 16½ per centum thereof.

"(2) **Foreign corporations.** The tax imposed by paragraph (1) shall apply to foreign corporations as well as domestic corporations; but foreign insurance companies not carrying on an insurance business within the United States shall be taxable as other foreign corporations."

Derived from Act May 28, 1938, c. 289, § 207, 52 Stat. 526. **Similar provisions.** Acts June 22, 1936, c. 690, § 207, 49 Stat. 1713; May 10, 1934, c. 277, § 207, 48 Stat. 735; June 6, 1932, c. 209, § 208, 47 Stat. 227; May 29, 1928, c. 852, § 208, 45 Stat. 846; Feb. 26, 1926, c. 27, §§ 233, 234, 44 Stat. 41; June 2, 1924, c. 234, §§ 233, 234, 43 Stat. 283; Nov. 23, 1921, c. 136, § 233, 42 Stat. 254; Feb. 24, 1919, c. 18, § 233, 40 Stat. 1077.

§ 208. **Net operating losses.** The benefit of the deduction for net operating losses allowed by section 23 (s) shall be allowed to insurance companies subject to the taxes imposed in this supplement under regulations prescribed by the Commissioner with the approval of the Secretary. (Added June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 211 (e) (2), 53 Stat. 868.)

SUPPLEMENT H.—NONRESIDENT ALIEN INDIVIDUALS

§ 211. **Tax on nonresident alien individuals—**(a) **No United States business or office—**(1) **General rule—**(A) **Imposition of tax.** There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 11 and 12, upon the amount received, by every nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 10 per centum of such amount, except that such rate shall be reduced, in the case of a resident of a contiguous country, to such rate (not less than 5 per centum) as may be provided by treaty with such country.

(B) **Cross reference.**

For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

(2) **Aggregate more than \$21,600.** The tax imposed by paragraph (1) shall not apply to any individual if the aggregate amount received during the taxable year from the sources therein specified is more than \$21,600.

(3) **Residents of contiguous countries.** Despite the provisions of paragraph (2), the provisions of paragraph (1) shall apply to a resident of a contiguous country so long as there is in effect a treaty with such country (ratified prior to August 26, 1937) under which the rate of tax under section 211 (a) of the Revenue Act of 1936, 49 Stat. 1714, prior to its amendment by section 501 (a) of the Revenue Act of 1937, 50 Stat. 830, was reduced.

(b) **United States business or office.** A nonresident alien individual engaged in trade or business in the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a). As used in this section,

section 119, section 143, section 144, and section 231, the phrase "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include the performance of personal services for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year and whose compensation for such services does not exceed in the aggregate \$3,000. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities through a resident broker, commission agent, or custodian.

(c) **No United States business or office and gross income of more than \$21,600.** A nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein who has a gross income for any taxable year of more than \$21,600 from the sources specified in subsection (a) (1), shall be taxable without regard to the provisions of subsection (a) (1), except that—

(1) The gross income shall include only income from the sources specified in subsection (a) (1);

(2) The deductions (other than the so-called "charitable deduction" provided in section 213 (c)) shall be allowed only if and to the extent that they are properly allocable to the gross income from the sources specified in subsection (a) (1);

(3) The aggregate of the normal and surtax under sections 11 and 12 shall, in no case, be less than 10 per centum of the gross income from the sources specified in subsection (a) (1); and

(4) This subsection shall not apply to a resident of a contiguous country so long as there is in effect a treaty with such country (ratified prior to August 26, 1937) under which the rate of tax under section 211 (a) of the Revenue Act of 1936, prior to its amendment by section 501 (a) of the Revenue Act of 1937, was reduced. (53 Stat. 75.)

Derived from Act May 28, 1938, c. 289, § 211, 52 Stat. 527.
Similar provisions. Acts June 22, 1936, c. 690, § 211, 49 Stat. 1714, as amended Aug. 26, 1937, c. 815, Title V, § 501, 50 Stat. 830.

§ 212. **Gross income—(a) General rule.** In the case of a nonresident alien individual gross income includes only the gross income from sources within the United States.

(b) **Ships under foreign flag.** The income of a nonresident alien individual which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States shall not be included in gross income and shall be exempt from taxation under this chapter. (53 Stat. 76.)

Derived from Act May 28, 1938, c. 289, § 212, 52 Stat. 527.
Similar provisions. Acts June 22, 1936, c. 690, § 212, 49 Stat. 1715; May 10, 1934, c. 277, § 211, 48 Stat. 735; June 6, 1932, c. 209, § 212, 47 Stat. 228; May 29, 1928, c. 852, § 212, 45 Stat. 847; Feb. 26, 1926, c. 27, § 210, 213, 44 Stat. 21, 23; June 2, 1924, c. 234, §§ 210, 213, 43 Stat. 264, 267, as section 213 was amended by Act Feb. 26, 1925, c. 345, § 12, 43 Stat. 997.

§ 213. **Deductions—(a) General rule.** In the case of a nonresident alien individual the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined as provided in section 119, under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(b) **Losses.** (1) The deduction, for losses not connected with the trade or business if incurred in transactions entered into for profit, allowed by section 23 (e) (2) shall be allowed whether or not connected with income from sources within the United

States, but only if the profit, if such transaction had resulted in a profit, would be taxable under this chapter.

(2) The deduction for losses of property not connected with the trade or business if arising from certain casualties or theft, allowed by section 23 (e) (3), shall be allowed whether or not connected with income from sources within the United States, but only if the loss is of property within the United States.

(c) **Charitable, etc., contributions.** The so-called "charitable contribution" deduction allowed by section 23 (c) shall be allowed whether or not connected with income from sources within the United States, but only as to contributions or gifts made to domestic corporations, or to community chests, funds, or foundations, created in the United States, or to the vocational rehabilitation fund. (53 Stat. 76.)

Derived from Act May 28, 1938, c. 289, § 213, 52 Stat. 528.

Similar provisions. Acts June 22, 1936, c. 690, § 213, 49 Stat. 1715; May 10, 1934, c. 277, § 212, 48 Stat. 736; June 6, 1932, c. 209, § 213, 47 Stat. 228; May 29, 1928, c. 852, § 213, 45 Stat. 847; Feb. 26, 1926, c. 27, § 214, 44 Stat. 26; June 2, 1924, c. 234, § 214, 43 Stat. 269.

§ 214. **Credits against net income.** In the case of a nonresident alien individual the personal exemption allowed by section 25 (b) (1) of this chapter shall be only \$1,000. The credit for dependents allowed by section 25 (b) (2) shall not be allowed in the case of a nonresident alien individual unless he is a resident of a contiguous country. (53 Stat. 77.)

Derived from Act May 28, 1938, c. 289, § 214, 52 Stat. 528.

Similar provisions. Acts June 22, 1936, c. 690, § 214, 49 Stat. 1715; May 10, 1934, c. 277, § 213, 48 Stat. 736; June 6, 1932, c. 209, § 214, 47 Stat. 229; May 29, 1928, c. 852, § 214, 45 Stat. 848; Feb. 26, 1926, c. 27, § 216, 44 Stat. 29; June 2, 1924, c. 234, § 216, 43 Stat. 272.

§ 215. **Allowance of deductions and credits—(a) Return to contain information.** A nonresident alien individual shall receive the benefit of the deductions and credits allowed to him in this chapter only by filing or causing to be filed with the collector a true and accurate return of his total income received from all sources in the United States, in the manner prescribed in this chapter; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits.

(b) **Tax withheld at source.** The benefit of the personal exemption and credit for dependents may, in the discretion of the Commissioner and under regulations prescribed by him with the approval of the Secretary, be received by a nonresident alien individual entitled thereto, by filing a claim therefor with the withholding agent. (53 Stat. 77.)

Derived from Act May 28, 1938, c. 289, § 215, 52 Stat. 528.

Similar provisions. Acts June 22, 1936, c. 690, § 215, 49 Stat. 1716; May 10, 1934, c. 277, § 214, 48 Stat. 736; June 6, 1932, c. 209, § 215, 47 Stat. 229; May 29, 1928, c. 852, § 215, 45 Stat. 848; Feb. 26, 1926, c. 27, § 217, 44 Stat. 30; June 2, 1924, c. 234, § 217, 43 Stat. 278; Nov. 23, 1921, c. 136, § 217, 42 Stat. 243; Feb. 24, 1919, c. 18, § 217, 40 Stat. 1069; Sept. 8, 1916, c. 463, § 6, 39 Stat. 760, as amended by Act Oct. 3, 1917, c. 63, § 1202, 40 Stat. 330.

§ 216. **Credits against tax.** A nonresident alien individual shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131. (53 Stat. 77.)

Derived from Act May 28, 1938, c. 289, § 216, 52 Stat. 528.
Similar provisions. Acts June 22, 1936, c. 690, § 216, 49 Stat. 1716; May 10, 1934, c. 277, § 215, 48 Stat. 737; June 6, 1932, c. 209, § 216, 47 Stat. 229; May 29, 1928, c. 852, § 216, 45 Stat. 848.

§ 217. **Returns—(a) Requirement.** In the case of a nonresident alien individual the return, in lieu of the time prescribed in section 53 (a) (1), shall be made on or before the fifteenth day of the sixth month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then on or before the fifteenth day of June.

(b) **Exemption from requirement.** Subject to such conditions, limitations, and exceptions and under such

regulations as may be prescribed by the Commissioner, with the approval of the Secretary, nonresident alien individuals subject to the tax imposed by section 211 (a) may be exempted from the requirement of filing returns of such tax. (53 Stat. 77.)

Derived from Act May 28, 1938, c. 289, § 217, 52 Stat. 529. **Similar provisions.** Acts June 22, 1936, c. 690, § 217, 49 Stat. 1716; May 10, 1934, c. 277, § 216, 48 Stat. 737; June 6, 1932, c. 209, § 217, 47 Stat. 229; May 29, 1928, c. 852, § 217, 45 Stat. 848; Feb. 26, 1926, c. 27, § 227, 44 Stat. 39; June 2, 1924, c. 234, § 227, 43 Stat. 231; Nov. 23, 1921, c. 136, § 227, 42 Stat. 251; Feb. 24, 1919, c. 18, § 227, 40 Stat. 1075; Sept. 8, 1916, c. 463, § 8, 39 Stat. 761, as amended by Act Oct. 3, 1917, c. 63, § 1204, 40 Stat. 331; Oct. 3, 1913, c. 16, § II, D, 38 Stat. 168.

§ 218. Payment of tax—(a) Time of payment. In the case of a nonresident alien individual the total amount of tax imposed by this chapter shall be paid, in lieu of the time prescribed in section 56 (a), on the fifteenth day of June following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the sixth month following the close of the fiscal year.

(b) Withholding at source.

For withholding at source of tax on income of nonresident aliens, see section 143.

(53 Stat. 77.)

Derived from Act May 28, 1938, c. 289, § 218, 52 Stat. 529.

Similar provisions. Acts June 22, 1936, c. 690, § 218, 49 Stat. 1716; May 10, 1934, c. 277, § 217, 48 Stat. 737; June 6, 1932, c. 209, § 218, 47 Stat. 229; May 29, 1928, c. 852, § 218, 45 Stat. 848; Feb. 26, 1926, c. 27, § 270a, 44 Stat. 54; June 2, 1924, c. 234, § 270a, 43 Stat. 295; Nov. 23, 1921, c. 136, § 250, 42 Stat. 264; Feb. 24, 1919, c. 18, § 250, 40 Stat. 1082; Oct. 3, 1917, c. 63, § 1009, 40 Stat. 326; Sept. 8, 1916, c. 463, §§ 9, 14, 39 Stat. 763, 772, as amended by Act Oct. 3, 1917, c. 63, § 1205, 40 Stat. 332; Oct. 3, 1913, c. 16, § II, E, G, 38 Stat. 169, 176.

§ 219. Partnerships. For the purpose of this chapter, a nonresident alien individual shall be considered as being engaged in a trade or business within the United States if the partnership of which he is a member is so engaged and as having an office or place of business within the United States if the partnership of which he is a member has such an office or place of business. (53 Stat. 78.)

Derived from Act May 28, 1938, c. 289, § 219, 52 Stat. 530.

Similar provisions. Act June 22, 1936, c. 690, § 219, 49 Stat. 1716.

SUPPLEMENT I.—FOREIGN CORPORATIONS

§ 231. Tax on foreign corporations—(a) Nonresident corporations—(1) Imposition of tax. There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 13 and 14, upon the amount received by every foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 15 per centum of such amount, except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country.

(2) Cross reference.

For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

(b) Resident corporations. A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14 (c) (1). (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 206, 53 Stat. 866.)

(c) Gross income. In the case of a foreign corporation gross income includes only the gross income from sources within the United States.

(d) Ships under foreign flag. The income of a foreign corporation, which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States, shall not be included in gross income and shall be exempt from taxation under this chapter. (53 Stat. 78, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 206, 53 Stat. 866.)

Subsec. (b) was amended by Act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939, by § 229 of said act. Prior to said amendment subsection (b) read as follows:

"(b) Resident corporations. A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14 (e) (1)."

Derived from Act May 28, 1938, c. 289, § 231, 52 Stat. 530.

Similar provisions. Acts June 22, 1936, c. 690, § 231, 49 Stat. 1717; May 10, 1934, c. 277, § 231, 48 Stat. 737; June 6, 1932, c. 209, § 231, 47 Stat. 229; May 29, 1928, c. 852, § 231, 45 Stat. 849; Feb. 26, 1926, c. 27, § 213, 233, 44 Stat. 23, 41; June 2, 1924, c. 234, §§ 213, 233, 43 Stat. 267, 283, as amended by Act Feb. 26, 1925, c. 345, § 12, 43 Stat. 997; Nov. 23, 1921, c. 136, § 233, 42 Stat. 254; Feb. 24, 1919, c. 18, § 233, 40 Stat. 1077.

§ 232. Deductions—(a) In general. In the case of a foreign corporation the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources within and without the United States shall be determined as provided in section 119, under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(b) Charitable, and so forth, contributions. The so-called "charitable contribution" deduction allowed by section 23 (q) shall be allowed whether or not connected with income from sources within the United States. (53 Stat. 78.)

Derived from Act May 28, 1938, c. 289, § 232, 52 Stat. 531.

Similar provisions. Acts June 22, 1936, c. 690, § 232, 49 Stat. 1717; May 10, 1934, c. 277, § 232, 48 Stat. 737, as amended by Act Aug. 30, 1935, c. 829, § 102 (e), 49 Stat. 1016; June 6, 1932, c. 209, § 232, 47 Stat. 230; May 29, 1928, c. 852, § 232, 45 Stat. 849; Feb. 26, 1926, c. 27, § 234, 44 Stat. 41; June 2, 1924, c. 234, § 234, 43 Stat. 283; Nov. 23, 1921, c. 136, § 234, 42 Stat. 254, as amended by Act Sept. 19, 1922, c. 346, § 27, 42 Stat. 856; Feb. 24, 1919, c. 18, § 234, 40 Stat. 1077; Sept. 8, 1916, c. 463, § 12, 39 Stat. 767, as amended by Act Oct. 3, 1917, c. 63, § 1207, 40 Stat. 334; Oct. 3, 1913, c. 16, § II, G, 38 Stat. 172.

§ 233. Allowance of deductions and credits. A foreign corporation shall receive the benefit of the deductions and credits allowed to it in this chapter only by filing or causing to be filed with the collector a true and accurate return of its total income received from all sources in the United States, in the manner prescribed in this chapter; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits. (53 Stat. 79.)

Derived from Act May 28, 1938, c. 289, § 233, 52 Stat. 531.

Similar provisions. Acts June 22, 1936, c. 690, § 233, 49 Stat. 1717; May 10, 1934, c. 277, § 233, 48 Stat. 737; June 6, 1932, c. 209, § 233, 47 Stat. 230; May 29, 1928, c. 852, § 233, 45 Stat. 849; Feb. 26, 1926, c. 27, § 217, 232, 44 Stat. 30, 41; June 2, 1924, c. 234, §§ 217, 232, 43 Stat. 273, 283; Nov. 23, 1921, c. 136, §§ 217, 232, 42 Stat. 243, 254; Feb. 24, 1919, c. 18, §§ 217, 232, 40 Stat. 1069, 1077.

§ 234. Credits against tax. Foreign corporations shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131. (53 Stat. 79.)

Derived from Act May 28, 1938, c. 289, § 234, 52 Stat. 531.

Similar provisions. Acts June 22, 1936, c. 690, § 234, 49 Stat. 1718; May 10, 1934, c. 277, § 234, 48 Stat. 737; June 6, 1932, c. 209, § 234, 47 Stat. 230; May 29, 1928, c. 852, § 234, 45 Stat. 849.

§ 235. Returns—(a) Time of filing. In the case of a foreign corporation not having any office or place of business in the United States the return, in lieu of the time prescribed in section 53 (a) (1), shall be made on or before the fifteenth day of the sixth month following the close of the fiscal year, or, if the return is made on the basis of the calendar year then on or

before the fifteenth day of June. If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return shall be made by the agent.

(b) **Exemption from requirement.** Subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Commissioner, with the approval of the Secretary, corporations subject to the tax imposed by section 231 (a) may be exempted from the requirement of filing returns of such tax. (53 Stat. 79.)

Derived from Act May 28, 1938, c. 289, § 235, 52 Stat. 531.

Similar provisions. Acts June 22, 1936, c. 690, § 235, 49 Stat. 1718; May 10, 1934, c. 277, § 235, 48 Stat. 738; June 6, 1932, c. 209, § 235, 47 Stat. 230; May 29, 1928, c. 852, § 235, 45 Stat. 849; Feb. 26, 1926, c. 27, §§ 239, 241, 44 Stat. 45; June 2, 1924, c. 234, §§ 239, 241, 43 Stat. 287; Nov. 23, 1921, c. 136, §§ 239, 241, 42 Stat. 259, 260; Feb. 24, 1919, c. 18, §§ 239, 241, 40 Stat. 1081, 1082; Sept. 8, 1916, c. 463, § 13, 39 Stat. 770, as amended by Act Oct. 3, 1917, c. 63, § 1208, 40 Stat. 335; Oct. 3, 1913, c. 16, § II, G, 38 Stat. 174, 175.

§ 236. **Payment of tax—(a) Time of payment.** In the case of a foreign corporation not having any office or place of business in the United States the total amount of tax imposed by this chapter shall be paid, in lieu of the time prescribed in section 56 (a), on the fifteenth day of June following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the sixth month following the close of the fiscal year.

(b) **Withholding at source.**

For withholding at source of tax on income of foreign corporations, see section 144.

(53 Stat. 79.)

Derived from Act May 28, 1938, c. 289, § 236, 52 Stat. 531.

Similar provisions. Acts June 22, 1936, c. 690, § 236, 49 Stat. 1718; May 10, 1934, c. 277, § 236, 48 Stat. 738; June 6, 1932, c. 209, § 236, 47 Stat. 230; May 29, 1928, c. 852, § 236, 45 Stat. 849; Feb. 26, 1926, c. 27, § 270a, 44 Stat. 54; June 2, 1924, c. 234, § 270a, 43 Stat. 295; Nov. 23, 1921, c. 136, § 250, 42 Stat. 264; Feb. 24, 1919, c. 18, § 250, 40 Stat. 1082; Oct. 3, 1917, c. 63, § 1009, 40 Stat. 326; Sept. 8, 1916, c. 463, §§ 9, 14, 39 Stat. 763, 772, as amended by Act Oct. 3, 1917, c. 63, § 1205, 40 Stat. 332; Oct. 3, 1913, c. 16, § II, E, G, 38 Stat. 167, 176.

§ 237. **Foreign insurance companies.**

For special provisions relating to foreign insurance companies, see Supplement G.

(53 Stat. 79.)

Derived from Act May 28, 1938, c. 289, § 237, 52 Stat. 531.

Similar provisions. Acts June 22, 1936, c. 690, § 237, 49 Stat. 1718; May 10, 1934, c. 277, § 237, 48 Stat. 738.

§ 238. **Affiliation.** A foreign corporation shall not be deemed to be affiliated with any other corporation within the meaning of section 141. (53 Stat. 79.)

Derived from Act May 28, 1938, c. 289, § 238, 52 Stat. 532.

Similar provisions. Acts June 22, 1936, c. 690, § 238, 49 Stat. 1718; May 10, 1934, c. 277, § 238, 48 Stat. 738; June 6, 1932, c. 209, § 238, 47 Stat. 230; May 29, 1928, c. 852, § 238, 45 Stat. 850.

SUPPLEMENT J.—POSSESSIONS OF THE UNITED STATES

§ 251. **Income from sources within possessions of United States—(a) General rule.** In the case of citizens of the United States or domestic corporations, satisfying the following conditions, gross income means only gross income from sources within the United States—

(1) If 80 per centum or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section), for the three-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

(2) If, in the case of such corporation, 50 per centum or more of its gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States; or

(3) If, in case of such citizen, 50 per centum or more of his gross income (computed without the bene-

fit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States either on his own account or as an employee or agent of another.

(b) **Amounts received in United States.** Notwithstanding the provisions of subsection (a) there shall be included in gross income all amounts received by such citizens or corporations within the United States, whether derived from sources within or without the United States.

(c) **Tax in case of corporations—(1) Corporation tax.** A domestic corporation entitled to the benefits of this section shall be subject to tax under section 13 or section 14 (b). (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 207, 53 Stat. 866.)

(2) **Cross reference.**

For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

(d) **Definition.** As used in this section the term "Possession of the United States" does not include the Virgin Islands of the United States.

(e) **Deductions.** (1) Citizens of the United States entitled to the benefits of this section shall have the same deductions as are allowed by Supplement H in the case of a nonresident alien individual engaged in trade or business within the United States or having an office or place of business therein.

(2) Domestic corporations entitled to the benefits of this section shall have the same deductions as are allowed by Supplement I in the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein.

(f) **Credits against net income.** A citizen of the United States entitled to the benefits of this section shall be allowed a personal exemption of only \$1,000 and shall not be allowed the credit for dependents provided in section 25 (b) (2).

(g) **Allowance of deductions and credits.** Citizens of the United States and domestic corporations entitled to the benefits of this section shall receive the benefit of the deductions and credits allowed to them in this chapter only by filing or causing to be filed with the collector a true and accurate return of their total income received from all sources in the United States, in the manner prescribed in this chapter; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits.

(b) **Credits against tax.** Persons entitled to the benefits of this section shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131.

(i) **Affiliation.** A corporation entitled to the benefits of this section shall not be deemed to be affiliated with any other corporation within the meaning of section 141. (53 Stat. 79, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 207, 53 Stat. 866.)

Subsec. (c), par. (1) was amended by Act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939 by § 229 of said act. Prior to said amendment subsection (c), par. (1) read as follows:

"(c) **Tax in case of corporations—(1) Section imposing tax.** A domestic corporation entitled to the benefits of this section shall be taxable as provided in section 14 (d)."

Derived from Act May 28, 1938, c. 289, § 251, 52 Stat. 532.

Similar provisions. Acts June 22, 1936, c. 690, § 251, 49 Stat. 1718; May 10, 1934, c. 277, § 251, 48 Stat. 738; June 6, 1932, c. 209, § 251, 47 Stat. 231; May 29, 1928, c. 852, § 251, 45 Stat. 850; Feb. 26, 1926, c. 27, §§ 214, 216, 217, 222, 232, 234, 238, 240, 262, 44 Stat. 26, 29, 30, 36, 41, 44, 46, 53; June 2, 1924, c. 234, §§ 214, 216, 217, 222, 232, 234, 238, 240, 262, 43 Stat. 269, 272, 273, 279, 283, 286, 288, 294.

§ 252. **Citizens of possessions of United States.**

(a) Any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under this chapter only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources.

(b) Nothing in this section shall be construed to alter or amend the provisions of the Act entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1922, and for other purposes," approved July 12, 1921, c. 44, 42 Stat. 123 (U. S. C., Title 48, § 1397), relating to the imposition of income taxes in the Virgin Islands of the United States. (53 Stat. 80.)

Derived from Act May 28, 1938, c. 289, § 252, 52 Stat. 533. **Similar provisions.** Acts June 22, 1936, c. 690, § 252, 49 Stat. 1719; May 10, 1934, c. 277, § 252, 48 Stat. 739; June 6, 1932, c. 209, § 252, 47 Stat. 232; May 29, 1928, c. 852, § 252, 45 Stat. 851; Feb. 26, 1926, c. 27, § 260, 44 Stat. 52; June 2, 1924, c. 234, § 260, 43 Stat. 294; Nov. 23, 1921, c. 136, § 260, 42 Stat. 270; Feb. 24, 1919, c. 18, § 260, 40 Stat. 1087.

SUPPLEMENT K.—CHINA TRADE ACT CORPORATIONS

§ 261. **Taxation in general—(a) Corporation tax.** A corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., 1934 ed., title 15, chap. 4), shall be subject to tax under section 13 or section 14 (b). (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 208, 53 Stat. 866.)

(h) Cross reference.

For inclusion in computation of tax of amount specified in shareholder's consent, see section 28.

(53 Stat. 81, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 208, 53 Stat. 866.)

Subsec. (a) was amended by Act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939 by § 229 of said act. Prior to said amendment subsection (a) read as follows:

"(a) **Imposition of tax.** A corporation organized under the China Trade Act, 1922, 42 Stat. 849 (U. S. C., Title 15, c. 4), shall be taxable as provided in section 14 (d)."

Derived from Act May 28, 1938, c. 289, § 261, 52 Stat. 533. **Similar provisions.** Act June 22, 1936, c. 690, § 261, 49 Stat. 1720.

§ 262. **Credit against net income—(a) Allowance of credit.** For the purpose only of the taxes imposed by sections 13, 14, and 600 of this title and section 106 of the Revenue Act of 1935 there shall be allowed, in the case of a corporation organized under the China Trade Act, 1922, in addition to the credits against net income otherwise allowed such corporation, a credit against the net income of an amount equal to the proportion of the net income derived from sources within China (determined in a similar manner to that provided in section 119) which the par value of the shares of stock of the corporation owned on the last day of the taxable year by (1) persons resident in China, the United States, or possessions of the United States, and (2) individual citizens of the United States or China wherever resident, bears to the par value of the whole number of shares of stock of the corporation outstanding on such date: *Provided*, That in no case shall the diminution, by reason of such credit, of the tax imposed by such section 13 or 14 (computed without regard to this section) exceed the amount of the special dividend certified under subsection (b) of this section; and in no case shall the diminution, by reason of such credit, of the tax imposed by such section 106 or 600 (computed without regard to this section) exceed the amount by which such special dividend exceeds the diminution permitted by this section in the tax imposed by such section 13 or 14. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 210 (c), 53 Stat. 866.)

(b) **Special dividend.** Such credit shall not be allowed unless the Secretary of Commerce has certified to the Commissioner—

(1) The amount which, during the year ending on the date fixed by law for filing the return, the corporation has distributed as a special dividend to or for the benefit of such persons as on the last day of the taxable year were resident in China, the United States, or possessions of the United States, or were individual citizens of the United States or China, and owned shares of stock of the corporation;

(2) That such special dividend was in addition to all other amounts, payable or to be payable to such persons or for their benefit, by reason of their interest in the corporation; and

(3) That such distribution has been made to or for the benefit of such persons in proportion to the par value of the shares of stock of the corporation owned by each; except that if the corporation has more than one class of stock, the certificates shall contain a statement that the articles of incorporation provide a method for the apportionment of such special dividend among such persons, and that the amount certified has been distributed in accordance with the method so provided.

(c) **Ownership of stock.** For the purposes of this section shares of stock of a corporation shall be considered to be owned by the person in whom the equitable right to the income from such shares is in good faith vested.

(d) **Definition of China.** As used in this section the term "China" shall have the same meaning as when used in the China Trade Act, 1922. (53 Stat. 81, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 210 (c), 53 Stat. 866.)

Subsec. (a) was amended by Act June 29, 1939, cited to text by inclusion of taxes imposed by section 13, and amendment made applicable only with respect to taxable years beginning after December 31, 1939 by § 229 of said act.

Derived from Act May 28, 1938, c. 289, § 262, 52 Stat. 533. **Similar provisions.** Acts June 22, 1936, c. 690, § 262, 49 Stat. 1720; May 10, 1934, c. 277, § 261, 48 Stat. 739; June 6, 1932, c. 209, § 261, 47 Stat. 232; May 29, 1928, c. 852, § 261, 45 Stat. 851; Feb. 26, 1926, c. 27, § 263, 44 Stat. 53; June 2, 1924, c. 234, § 263, 43 Stat. 295, as amended by Act Feb. 26, 1925, c. 345, § 11, 43 Stat. 996; Nov. 23, 1921, c. 136, § 264, as added by Act Sept. 19, 1922, c. 346, § 21, 42 Stat. 855.

§ 263. **Credits against the tax.** A corporation organized under the China Trade Act, 1922, shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131. (53 Stat. 82.)

Derived from Act May 28, 1938, c. 289, § 263, 52 Stat. 534.

Similar provisions. Acts June 22, 1936, c. 690, § 263, 49 Stat. 1721; May 10, 1934, c. 277, § 262, 48 Stat. 740; June 6, 1932, c. 209, § 262, 47 Stat. 233; May 29, 1928, c. 852, § 262, 45 Stat. 852.

§ 264. **Affiliation.** A corporation organized under the China Trade Act, 1922, shall not be deemed to be affiliated with any other corporation within the meaning of section 141. (53 Stat. 82.)

Derived from Act May 28, 1938, c. 289, § 264, 52 Stat. 534.

Similar provisions. Acts June 22, 1936, c. 690, § 264, 49 Stat. 1721; May 10, 1934, c. 277, § 263, 48 Stat. 740; June 6, 1932, c. 209, § 263, 47 Stat. 233; May 29, 1928, c. 852, § 263, 45 Stat. 852; Feb. 26, 1926, c. 27, § 240, 44 Stat. 46; June 2, 1924, c. 234, § 240, 43 Stat. 288.

§ 265. Income of shareholders.

For exclusion of dividends from gross income, see section 116.

(53 Stat. 82.)

Derived from Act May 28, 1938, c. 289, § 265, 52 Stat. 534.

Similar provisions. Acts June 22, 1936, c. 690, § 265, 49 Stat. 1721; May 10, 1934, c. 277, § 264, 48 Stat. 740.

SUPPLEMENT L.—ASSESSMENT AND COLLECTION OF DEFICIENCIES

§ 271. **Definition of deficiency.** As used in this chapter in respect of a tax imposed by this chapter "deficiency" means—

(a) The amount by which the tax imposed by this chapter exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or

(b) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts

previously abated, credited, refunded, or otherwise repaid in respect of such tax. (53 Stat. 82.)

Derived from Act May 28, 1938, c. 289, § 271, 52 Stat. 534.

Similar provisions. Acts June 22, 1936, c. 690, § 271, 49 Stat. 1721; May 10, 1934, c. 277, § 271, 48 Stat. 740; June 6, 1932, c. 209, § 271, 47 Stat. 233; May 29, 1928, c. 852, § 271, 45 Stat. 852; Feb. 26, 1926, c. 27, § 240, 44 Stat. 46; June 2, 1924, c. 234, § 240, 43 Stat. 288.

§ 272. Procedure in general—(a) (1) Petition to Board of Tax Appeals. If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3653 (a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. In the case of a joint return filed by husband and wife such notice of deficiency may be a single joint notice, except that if the Commissioner has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, duplicate originals of the joint notice must be sent by registered mail to each spouse at his last known address.

(2) Cross references

For exceptions to the restrictions imposed by this subsection, see—Subsection (d) of this section, relating to waivers by the taxpayer;

Subsection (f) of this section, relating to notifications of mathematical errors appearing upon the face of the return; Section 273, relating to jeopardy assessments;

Section 274, relating to bankruptcies and receiverships; and

Section 1145, relating to assessment or collection of the amount of the deficiency determined by the Board pending court review.

(b) Collection of deficiency found by Board. If the taxpayer files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) Failure to file petition. If the taxpayer does not file a petition with the Board within the time prescribed in subsection (a) of this section, the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) Waiver of restrictions. The taxpayer shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) of this section on the assessment and collection of the whole or any part of the deficiency.

(e) Increase of deficiency after notice mailed. The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any penalty, additional amount or addition to the tax should be assessed—if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) Further deficiency letters restricted. If the Commissioner has mailed to the taxpayer notice of a deficiency as provided in subsection (a) of this section, and the taxpayer files a petition with the Board within

the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency in respect of the same taxable year, except in the case of fraud, and except as provided in subsection (e) of this section, relating to assertion of greater deficiencies before the Board, or in section 273 (c), relating to the making of jeopardy assessments. If the taxpayer is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered (for the purposes of this subsection, or of subsection (a) of this section, prohibiting assessment and collection until notice of deficiency has been mailed, or of section 322 (c), prohibiting credits or refunds after petition to the Board of Tax Appeals) as a notice of a deficiency, and the taxpayer shall have no right to file a petition with the Board based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section.

(g) Jurisdiction over other taxable years. The Board in redetermining a deficiency in respect of any taxable year shall consider such facts with relation to the taxes for other taxable years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other taxable year has been overpaid or underpaid.

(h) Final decisions of Board. For the purposes of this chapter the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1140.

(i) Prorating of deficiency to installments. If the taxpayer has elected to pay the tax in installments and a deficiency has been assessed, the deficiency shall be prorated to the four installments. Except as provided in section 273 (relating to jeopardy assessments), that part of the deficiency so prorated to any installment the date for payment of which has not arrived, shall be collected at the same time as and as part of such installment. That part of the deficiency so prorated to any installment the date for payment of which has arrived, shall be paid upon notice and demand from the collector.

(j) Extension of time for payment of deficiencies. Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the taxpayer the Commissioner, under regulations prescribed by the Commissioner, with the approval of the Secretary, may grant an extension for the payment of such deficiency for a period not in excess of eighteen months, and, in exceptional cases, for a further period not in excess of twelve months. If an extension is granted, the Commissioner may require the taxpayer to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. No extension shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(k) Address for notice of deficiency. In the absence of notice to the Commissioner under section 312 (a) of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by this chapter, if mailed to the taxpayer at his last known address, shall be sufficient for the purposes of this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. (53 Stat. 82.)

Derived from Act May 28, 1938, c. 289, § 272, 52 Stat. 535.

Similar provisions. Acts June 22, 1936, c. 690, § 272, 49 Stat. 1721; May 10, 1934, c. 277, §§ 272, 501, 48 Stat. 741, 755; June 6, 1932, c. 209, § 272, 47 Stat. 233; May 29, 1928, c. 852, § 272, 45 Stat. 852; Feb. 26, 1926, c. 27, § 274, 44 Stat. 55; June 2, 1924, c. 234, § 274, 43 Stat. 297; Nov. 23, 1921, c. 136, § 228, 42 Stat. 252; Feb. 24, 1919, c. 18,

§ 228, 40 Stat. 1075; Sept. 8, 1916, c. 463, § 19, 39 Stat. 776; Oct. 3, 1913, c. 16, § II, D, 38 Stat. 168.
 Act May 28, 1938, c. 289, § 816, 52 Stat. 578, provided that 30 days after enactment of the 1938 Act, the requirement of section 272 (j) of the 1936, 1934, 1932, and 1928 Acts, section 274 (k) of the 1926 Act, section 274 (g) of the 1924 Act, section 250 (f) of the 1921 Act, that the Secretary approve an extension of time for payment of deficiency in income, estate, or gift taxes should not apply, but that approval should be by the commissioner under regulations prescribed by him with the approval of the Secretary.

§ 273. Jeopardy assessments—(a) Authority for making. If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) Deficiency letters. If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 272 (a), then the Commissioner shall mail a notice under such subsection within sixty days after the making of the assessment.

(c) Amount assessable before decision of Board. The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the taxpayer, despite the provisions of section 272 (f) prohibiting the determination of additional deficiencies, and whether or not the taxpayer has theretofore filed a petition with the Board of Tax Appeals. The Commissioner may, at any time before the decision of the Board is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Commissioner shall notify the Board of the amount of such assessment, or abatement, if the petition is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of Board. If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

(e) Expiration of right to assess. A jeopardy assessment may not be made after the decision of the Board has become final or after the taxpayer has filed a petition for review of the decision of the Board.

(f) Bond to stay collection. When a jeopardy assessment has been made the taxpayer, within 10 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in section 297. If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Board is rendered, the bond shall, at the request of the taxpayer, be proportionately reduced.

(g) Same—Further conditions. If the bond is given before the taxpayer has filed his petition with the Board under section 272 (a), the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

(b) Waiver of stay. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer

shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the taxpayer, be proportionately reduced.

(i) Collection of unpaid amounts. When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 322, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

(j) Claims in abatement. No claim in abatement shall be filed in respect of any assessment in respect of any tax imposed by this chapter. (53 Stat. 84.)

Derived from Act May 28, 1938, c. 289, § 273, 52 Stat. 537. Similar provisions, Acts June 22, 1936, c. 690, § 273, 49 Stat. 1723; May 10, 1934, c. 277, § 273, 48 Stat. 743; June 6, 1932, c. 209, § 273, 47 Stat. 235; May 29, 1928, c. 852, § 273, 45 Stat. 854; Feb. 26, 1926, c. 27, § 279, 44 Stat. 59; June 2, 1924, c. 234, §§ 274 (d), 279, 43 Stat. 297, 300.

§ 274. Bankruptcy and receiverships—(a) Immediate assessment. Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy proceeding or the appointment of a receiver for any taxpayer in any receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) determined by the Commissioner in respect of a tax imposed by this chapter upon such taxpayer shall, despite the restrictions imposed by section 272 (a) upon assessments be immediately assessed if such deficiency has not theretofore been assessed in accordance with law. In such cases the trustee in bankruptcy or receiver shall give notice in writing to the Commissioner of the adjudication of bankruptcy or the appointment of the receiver, and the running of the statute of limitations on the making of assessments shall be suspended for the period from the date of adjudication in bankruptcy or the appointment of the receiver to a date 30 days after the date upon which the notice from the trustee or receiver is received by the Commissioner; but the suspension under this sentence shall in no case be for a period in excess of two years. Claims for the deficiency and such interest, additional amounts and additions to the tax may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of proceedings for the redetermination of the deficiency in pursuance of a petition to the Board; but no petition for any such redetermination shall be filed with the Board after the adjudication of bankruptcy or the appointment of the receiver.

(b) Unpaid claims. Any portion of the claim allowed in such bankruptcy or receivership proceeding which is unpaid shall be paid by the taxpayer upon notice and demand from the collector after the termination of such proceeding, and may be collected by distraint or proceeding in court within 6 years after termination of such proceeding. Extensions of time for such payment may be had in the same manner and subject to the same provisions and limitations as are provided in section 272 (j) and section 296 in the case

of a deficiency in a tax imposed by this chapter. (53 Stat. 86.)

Derived from Act May 28, 1938, c. 289, § 274, 52 Stat. 538. **Similar provisions.** Acts June 22, 1936, c. 690, § 274, 49 Stat. 1725; May 10, 1934, c. 277, §§ 274, 505 (a), 48 Stat. 744, 757; June 6, 1932, c. 209, § 274, 47 Stat. 237; May 29, 1928, c. 852, § 274, 45 Stat. 856; Feb. 26, 1926, c. 27, § 282, 44 Stat. 62.

§ 275. Period of limitation upon assessment and collection. Except as provided in section 276—

(a) **General rule.** The amount of income taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(b) **Request for prompt assessment.** In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within eighteen months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of three years after the return was filed. This subsection shall not apply in the case of a corporation unless—

(1) Such written request notifies the Commissioner that the corporation contemplates dissolution at or before the expiration of such 18 months' period; and

(2) The dissolution is in good faith begun before the expiration of such 18 months' period; and

(3) The dissolution is completed.

(c) **Omission from gross income.** If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 5 years after the return was filed.

(d) **Shareholders of foreign personal holding companies.** If the taxpayer omits from gross income an amount properly includible therein under section 337

(b) (relating to the inclusion in the gross income of United States shareholders of their distributive shares of the undistributed Supplement P net income of a foreign personal holding company) the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within seven years after the return was filed.

(e) **Distributions in liquidation to shareholders.** If the taxpayer omits from gross income an amount properly includible therein under section 115 (c) as an amount distributed in liquidation of a corporation, other than a foreign personal holding company, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within four years after the return was filed.

(f) For the purposes of subsections (a), (b), (c), (d), and (e), a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(g) **Corporation and shareholder.** If a corporation makes no return of the tax imposed by this chapter, but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed. (53 Stat. 86.)

Derived from Act May 28, 1938, c. 289, § 275, 52 Stat. 539.

Similar provisions. Acts June 22, 1936, c. 690, § 275, 49 Stat. 1725, as amended by Act Aug. 26, 1937, c. 815, Title II, § 206, 50 Stat. 826; May 10, 1934, c. 277, § 275, 48 Stat. 745; June 6, 1932, c. 209, § 275, 47 Stat. 237; May 29, 1928, c. 852, § 275, 45 Stat. 856; Feb. 26, 1926, c. 27, § 277, 44 Stat. 58, as amended by Act May 29, 1928, c. 852, §§ 503, 504 (a), 45 Stat. 869, 870; June 2, 1924, c. 234, § 277, 43 Stat. 299.

§ 276. Same—Exceptions—(a) False return or no return. In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) **Waiver.** Where before the expiration of the time prescribed in section 275 for the assessment of the tax, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) **Collection after assessment.** Where the assessment of any income tax imposed by this chapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such six-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. (53 Stat. 87.)

Derived from Act May 28, 1938, c. 289, § 276, 52 Stat. 540.

Similar provisions. Acts June 22, 1936, c. 690, § 276, 49 Stat. 1726; May 10, 1934, c. 277, § 276, 48 Stat. 745; June 6, 1932, c. 209, § 276, 47 Stat. 238; May 29, 1928, c. 852, § 256, 45 Stat. 857; Feb. 26, 1926, c. 27, § 278, 44 Stat. 59, as amended by Act May 29, 1928, c. 852, § 506 (a), 45 Stat. 870; June 2, 1924, c. 234, § 278, 43 Stat. 299.

§ 277. Suspension of running of statute. The running of the statute of limitations provided in section 275 or 276 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under section 272 (a)) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for sixty days thereafter. (53 Stat. 87.)

Derived from Act May 28, 1938, c. 289, § 277, 52 Stat. 540. **Similar provisions.** Acts June 22, 1936, c. 690, § 277, 49 Stat. 1726; May 10, 1934, c. 277, § 277, 48 Stat. 746; June 6, 1932, c. 209, § 277, 47 Stat. 238; May 29, 1928, c. 852, § 277, 45 Stat. 857; Feb. 26, 1926, c. 27, § 277, 44 Stat. 58, as amended by Act May 29, 1928, c. 852, §§ 503, 504 (a), 45 Stat. 869, 870; June 2, 1924, c. 234, § 277, 43 Stat. 299.

SUPPLEMENT M.—INTEREST AND ADDITIONS TO THE TAX

§ 291. Failure to file return. In case of any failure to make and file return required by this chapter, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the tax: 5 per centum if the failure is for not more than thirty days with an additional 5 per centum for each additional thirty days or fraction thereof during which such failure continues, not exceeding 25 per centum in the aggregate. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. The amount added to the tax under this section shall be in lieu of the 25 per centum addition to the tax provided in section 3612 (d) (1). (53 Stat. 88.)

Derived from Act May 28, 1938, c. 289, § 291, 52 Stat. 540.

Similar provisions. Acts June 22, 1936, c. 690, § 291, 49 Stat. 1727; May 10, 1934, c. 277, § 291, 48 Stat. 746; June 6, 1932, c. 209, § 291, 47 Stat. 238; May 29, 1928, c. 852, § 291, 45 Stat. 857.

§ 292. Interest on deficiencies. Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed, or, in the case of a waiver under section 272 (d), to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier. (53 Stat. 88.)

Derived from Act May 28, 1938, c. 289, § 292, 52 Stat. 541.

Similar provisions. Acts June 22, 1936, c. 690, § 292, 49 Stat. 1727; May 10, 1934, c. 277, § 292, 48 Stat. 746; June 6, 1932, c. 209, § 292, 47 Stat. 238; May 29, 1928, c. 852, § 292, 45 Stat. 858; Feb. 26, 1926, c. 27, § 274 (j), 44 Stat. 55; June 2, 1924, c. 234, § 274 (f), 43 Stat. 297.

§ 293. Additions to the tax in case of deficiency—

(a) Negligence. If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of section 272 (i), relating to the prorating of a deficiency, and of section 292, relating to interest on deficiencies, shall not be applicable.

(b) Fraud. If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612 (d) (2). (53 Stat. 88.)

Derived from Act May 28, 1938, c. 289, § 293, 52 Stat. 541.
Similar provisions. Acts June 22, 1936, c. 690, § 293, 49 Stat. 1727; May 10, 1934, c. 277, § 293, 48 Stat. 746; June 6, 1932, c. 209, § 293, 47 Stat. 239; May 29, 1928, c. 852, § 293, 45 Stat. 858; Feb. 26, 1926, c. 27, § 275, 44 Stat. 57; June 2, 1924, c. 234, § 275, 43 Stat. 298.

§ 294. Additions to the tax in case of nonpayment—

(a) Tax shown on return—(1) General rule. Where the amount determined by the taxpayer as the tax imposed by this chapter, or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 6 per centum per annum from the date prescribed for its payment until it is paid.

(2) If extension granted. Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any installment thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 295, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) Deficiency. Where a deficiency, or any interest or additional amounts assessed in connection therewith under section 292, or under section 293, or any addition to the tax in case of delinquency provided for in section 291, is not paid in full within ten days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid. If any part of a deficiency prorated to any unpaid installment under section 272 (i) is not paid in full on or before the date prescribed for the payment of such installment, there shall be collected as part of the tax interest upon the unpaid amount at the rate of 6 per centum per annum from such date until it is paid.

(c) Filing of jeopardy bond. If a bond is filed, as provided in section 273, the provisions of subsection

(b) of this section shall not apply to the amount covered by the bond. (53 Stat. 88.)

Derived from Act May 28, 1938, c. 289, § 294, 52 Stat. 541.
Similar provisions. Acts June 22, 1936, c. 690, § 294, 49 Stat. 1727; May 10, 1934, c. 277, § 294, 48 Stat. 747; June 6, 1932, c. 209, § 294, 47 Stat. 239; May 29, 1928, c. 852, § 294, 45 Stat. 858; Feb. 26, 1926, c. 27, § 276, 44 Stat. 57; June 2, 1924, c. 234, § 276, 43 Stat. 298.

§ 295. Time extended for payment of tax shown on return. If the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, is extended under the authority of section 56 (c), there shall be collected as a part of such amount, interest thereon at the rate of 6 per centum per annum from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension. (53 Stat. 89.)

Derived from Act May 28, 1938, c. 289, § 295, 52 Stat. 542.
Similar provisions. Acts June 22, 1936, c. 690, § 295, 49 Stat. 1728; May 10, 1934, c. 277, § 295, 48 Stat. 747; June 6, 1932, c. 209, § 295, 47 Stat. 240; May 29, 1928, c. 852, § 295, 45 Stat. 859; Feb. 26, 1926, c. 27, § 270 (c), 44 Stat. 54; June 2, 1924, c. 234, § 270 (c), 43 Stat. 295.

§ 296. Time extended for payment of deficiency.

If the time for the payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 6 per centum per annum for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period. (53 Stat. 89.)

Derived from Act May 28, 1938, c. 289, § 296, 52 Stat. 542.
Similar provisions. Acts June 22, 1936, c. 690, § 296, 49 Stat. 1728; May 10, 1934, c. 277, § 296, 48 Stat. 748; June 6, 1932, c. 209, § 296, 47 Stat. 240; May 29, 1928, c. 852, § 296, 45 Stat. 859; Feb. 26, 1926, c. 27, § 274 (k), 44 Stat. 55, as amended by Act May 29, 1928, c. 852, § 502, 45 Stat. 869; June 2, 1924, c. 234, § 274 (g), 43 Stat. 297.

§ 297. Interest in case of jeopardy assessments.

In the case of the amount collected under section 273 (i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under section 273 (i), or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in section 292. If the amount included in the notice and demand from the collector under section 273 (i) is not paid in full within ten days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid. (53 Stat. 89.)

Derived from Act May 28, 1938, c. 289, § 297, 52 Stat. 542.
Similar provisions. Acts June 22, 1936, c. 690, § 297, 49 Stat. 1728; May 10, 1934, c. 277, § 297, 48 Stat. 748; June 6, 1932, c. 209, § 297, 47 Stat. 240; May 29, 1928, c. 852, § 297, 45 Stat. 859.

§ 298. Bankruptcy and receiverships. If the unpaid portion of the claim allowed in a bankruptcy or receivership proceeding, as provided in section 274, is not paid in full within ten days from the date of notice and demand from the collector, then there shall be collected as a part of such amount interest upon the unpaid portion thereof at the rate of 6 per centum per annum from the date of such notice and demand until payment. (53 Stat. 89.)

Derived from Act May 28, 1938, c. 289, § 298, 52 Stat. 542.

Similar provisions. Acts June 22, 1936, c. 690, § 298, 49 Stat. 1729; May 10, 1934, c. 277, § 298, 48 Stat. 748; June 6, 1932, c. 209, § 298, 47 Stat. 240; May 29, 1928, c. 852, § 298, 45 Stat. 859; Feb. 26, 1926, c. 27, § 282, 44 Stat. 62.

§ 299. Removal of property or departure from United States.

For additions to tax in case of leaving the United States or concealing property in such manner as to hinder collection of the tax, see section 146.

(53 Stat. 89.)

Derived from Act May 28, 1938, c. 289, § 299, 52 Stat. 543. Similar provisions. Acts June 22, 1936, c. 690, § 299, 49 Stat. 1729; May 10, 1934, c. 277, § 299, 48 Stat. 748.

SUPPLEMENT N.—CLAIMS AGAINST TRANSFEREES AND FIDUCIARIES.

§ 311. Transferred assets—(a) Method of collection. The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) **Transferees.** The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this chapter.

(2) **Fiduciaries.** The liability of a fiduciary under section 3467 of the Revised Statutes, as amended, (U. S. C., Title 31, § 192) in respect of the payment of any such tax from the estate of the taxpayer.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) **Period of limitation.** The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer,—within one year after the expiration of the period of limitation for assessment against the taxpayer;

(2) In the case of the liability of a transferee of a transferee of the property of the taxpayer,—within one year after the expiration of the period of limitation for assessment against the preceding transferee, but only if within three years after the expiration of the period of limitation for assessment against the taxpayer;—

except that if before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, respectively,—then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding.

(3) In the case of the liability of a fiduciary,—not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later;

(4) Where before the expiration of the time prescribed in paragraph (1), (2), or (3) for the assessment of the liability, both the Commissioner and the transferee or fiduciary have consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) **Period for assessment against taxpayer.** For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had death or termination of existence not occurred.

(d) **Suspension of running of statute of limitations.** The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary

shall, after the mailing to the transferee or fiduciary of the notice provided for in section 272 (a), be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for sixty days thereafter.

(e) **Address for notice of liability.** In the absence of notice to the Commissioner under section 312 (b) of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax imposed by this chapter, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purposes of this chapter even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(f) **Definition of "transferee".** As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee. (53 Stat. 90.)

Derived from Act May 28, 1938, c. 289, § 311, 52 Stat. 543. Similar provisions. Acts June 22, 1936, c. 690, § 311, 49 Stat. 1729; May 10, 1934, c. 277, § 311, 48 Stat. 748, as amended by Act May 28, 1938, c. 289, § 314 (b), 52 Stat. 578; June 6, 1932, c. 209, § 311, 47 Stat. 240, as amended by Act May 28, 1938, c. 289, § 314 (b), 52 Stat. 578; May 29, 1928, c. 852, § 311, 45 Stat. 860, as amended by Act May 28, 1938, c. 289, § 314 (b), 52 Stat. 578; Feb. 26, 1926, c. 27, § 280, 44 Stat. 61, as amended by Act May 28, 1938, c. 289, § 314 (a), 52 Stat. 578, and Act May 29, 1928, c. 852, § 505 (a), 45 Stat. 870.

§ 312. Notice of fiduciary relationship—(a) Fiduciary of taxpayer. Upon notice to the Commissioner that any person is acting in a fiduciary capacity such fiduciary shall assume the powers, rights, duties, and privileges of the taxpayer in respect of a tax imposed by this chapter (except as otherwise specifically provided and except that the tax shall be collected from the estate of the taxpayer), until notice is given that the fiduciary capacity has terminated.

(b) **Fiduciary of transferee.** Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 311, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person) until notice is given that the fiduciary capacity has terminated.

(c) **Manner of notice.** Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. (53 Stat. 91.)

Derived from Act May 28, 1938, c. 289, § 312, 52 Stat. 544. Similar provisions. Acts June 22, 1936, c. 690, § 312, 49 Stat. 1730; May 10, 1934, c. 277, § 312, 48 Stat. 750; June 6, 1932, c. 209, § 312, 47 Stat. 242; May 29, 1928, c. 852, § 312, 45 Stat. 861; Feb. 26, 1926, c. 27, § 281, 44 Stat. 62.

§ 313. Cross reference.

For prohibition of suits to restrain enforcement of liability of transferee or fiduciary, see section 3653 (b).

(53 Stat. 91.)

Derived from Act May 28, 1938, c. 289, § 321, 52 Stat. 544.

Similar provisions. Act May 29, 1928, c. 852, § 604, 45 Stat. 873.

SUPPLEMENT O.—OVERPAYMENTS

§ 321. Overpayment of installment. If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in section 322. (53 Stat. 91.)

Similar provisions. Acts June 22, 1936, c. 690, § 321, 49 Stat. 1730; May 10, 1934, c. 277, § 321, 48 Stat. 750; June 6, 1932, c. 209, § 321, 47 Stat. 242; May 29, 1928, c. 852, § 321, 45 Stat. 861; Feb. 26, 1926, c. 27, § 272, 44 Stat. 55; June 2, 1924, c. 234, § 272, 43 Stat. 296.

§ 322. Refunds and credits—(a) Authorization. Where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer.

(b) Limitation on allowance—(1) Period of limitation. Unless a claim for credit or refund is filed by the taxpayer within three years from the time the return was filed by the taxpayer or within two years from the time the tax was paid, no credit or refund shall be allowed or made after the expiration of whichever of such periods expires the later. If no return is filed by the taxpayer, then no credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) Limit on amount of credit or refund. The amount of the credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or, if no claim was filed, then during the three years immediately preceding the allowance of the credit or refund.

(c) Effect of petition to Board. If the Commissioner has mailed to the taxpayer a notice of deficiency under section 272 (a) and if the taxpayer files a petition with the Board of Tax Appeals within the time prescribed in such subsection, no credit or refund in respect of the tax for the taxable year in respect of which the Commissioner has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Board which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(3) As to any amount collected after the period of limitation upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Board which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive.

(d) Overpayment found by Board. If the Board finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax unless the Board determines as part of its decision that such portion was paid (1) within three years before the filing of the claim or the filing of the petition, whichever is earlier, or (2) after the mailing of the notice of deficiency.

(e) Tax withheld at source.

For refund or credit in case of excessive withholding at the source, see section 143 (f).

(53 Stat. 91.)

Derived from Act May 28, 1938, c. 289, § 322, 52 Stat. 544. **Similar provisions.** Acts June 22, 1936, c. 690, § 322, 49 Stat. 1731, as amended by Act May 28, 1938, c. 289, § 809 (a), 52 Stat. 575; May 10, 1934, c. 277, § 322, 48 Stat. 750, as amended by Act May 28, 1938, c. 289, § 809 (a), 52 Stat. 575; June 6, 1932, c. 209, § 322, 47 Stat. 242, as amended by Acts May 28, 1938, c. 289, § 809 (c), 52 Stat. 576, and May 10, 1934, c. 277, § 504 (a) (e), 48 Stat. 756; May 29, 1928, c. 852, § 322, 45 Stat. 861, as amended by Acts May 28, 1938, c. 289, § 809 (c), 52 Stat. 576, and May 10, 1934, c. 277, § 504 (a) (e), 48 Stat. 756; Feb. 26, 1926, c. 27, § 284, 44 Stat. 66, as amended by Acts May 28, 1938, c. 289, § 809 (d), 52 Stat. 576; May 10, 1934, c. 277, § 504 (c), 48 Stat. 756; May 29, 1928, c. 852, § 507, 45 Stat. 871; June 2, 1924, c. 234, § 281, 43 Stat. 301, as amended by Act Mar. 3, 1925, c. 435, 43 Stat. 1115; Nov. 23, 1921, c. 136, § 252, 42 Stat. 268, as amended by Acts Mar. 4, 1923, c. 276, 42 Stat. 1504; and Mar. 13, 1924, c. 55, 43 Stat. 22; Feb. 24, 1919, c. 18, § 252, 40 Stat. 1085.

SUPPLEMENT P.—FOREIGN PERSONAL HOLDING COMPANIES

§ 331. Definition of foreign personal holding company—(a) General rule. For the purposes of this chapter the term "foreign personal holding company" means any foreign corporation if—

(1) **Gross income requirement.** At least 60 per centum of its gross income (as defined in section 334 (a)) for the taxable year is foreign personal holding company income as defined in section 332; but if the corporation is a foreign personal holding company with respect to any taxable year ending after August 26, 1937, then, for each subsequent taxable year, the minimum percentage shall be 50 per centum in lieu of 60 per centum, until a taxable year during the whole of which the stock ownership required by paragraph (2) does not exist, or until the expiration of three consecutive taxable years in each of which less than 50 per centum of the gross income is foreign personal holding company income. For the purposes of this paragraph there shall be included in the gross income the amount includible therein as a dividend by reason of the application of section 334 (c) (2); and

(2) **Stock ownership requirement.** At any time during the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals who are citizens or residents of the United States, hereinafter called "United States group".

(h) Exceptions. The term "foreign personal holding company" does not include a corporation exempt from taxation under section 101. (53 Stat. 92.)

Derived from Act May 28, 1938, c. 289, § 331, 52 Stat. 545.

Similar provisions. Acts June 22, 1936, c. 690, § 331, as added by Act Aug. 26, 1937, c. 815, Title II, § 201, 50 Stat. 818.

§ 332. Foreign personal holding company income. For the purposes of this chapter the term "foreign personal holding company income" means the portion, of the gross income determined for the purposes of section 331 (a) (1), which consists of:

(a) Dividends, interest, royalties, annuities.

(b) Stock and securities transactions. Except in the case of regular dealers in stock or securities, gains from the sale or exchange of stock or securities.

(c) Commodities transactions. Gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange. This subsection shall not apply to gains by a producer, processor, merchant, or handler of the commodity which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others.

(d) Estates and trusts. Amounts includible in computing the net income of the corporation under Supplement E; and gains from the sale or other disposition of any interest in an estate or trust.

(e) Personal service contracts. (1) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and (2) amounts received from the sale or other disposition of such a contract. This subsection shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(f) Use of corporation property by shareholder. Amounts received as compensation (however designated and from whomsoever received) for the use of, or right to use, property of the corporation in any case where, at any time during the taxable year, 25

per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property; whether such right is obtained directly from the corporation or by means of a sublease or other arrangement.

(g) **Rents.** Rents, unless constituting 50 per centum or more of the gross income. For the purposes of this subsection the term "rents" means compensation, however designated, for the use of, or right to use, property; but does not include amounts constituting foreign personal holding company income under subsection (f). (53 Stat. 93.)

Derived from Act May 28, 1938, c. 289, § 332, 52 Stat. 546.

Similar provisions. Acts June 22, 1936, c. 690, § 334, as added by Act Aug. 26, 1937, c. 815, Title 2, § 201, 50 Stat. 820.

§ 333. **Stock ownership—(a) Constructive ownership.** For the purpose of determining whether a foreign corporation is a foreign personal holding company, insofar as such determination is based on stock ownership under section 331 (a) (2), section 332 (e), or section 332 (f)—

(1) **Stock not owned by individual.** Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) **Family and partnership ownership.** An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of this paragraph the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) **Options.** If any person has an option to acquire stock such stock shall be considered as owned by such person. For the purposes of this paragraph an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) **Application of family-partnership and option rules.** Paragraphs (2) and (3) shall be applied—

(A) For the purposes of the stock ownership requirement provided in section 331 (a) (2), if, but only if, the effect is to make the corporation a foreign personal holding company;

(B) For the purposes of section 332 (e) (relating to personal service contracts), or of section 332 (f) (relating to the use of property by shareholders), if, but only if, the effect is to make the amounts therein referred to includible under such subsection as foreign personal holding company income.

(5) **Constructive ownership as actual ownership.** Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for the purpose of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for the purpose of again applying such paragraph in order to make another the constructive owner of such stock.

(6) **Option rule in lieu of family and partnership rule.** If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) **Convertible securities.** Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) For the purpose of the stock ownership requirement provided in section 331 (a) (2), but only if the effect of the inclusion of all such securities is to make the corporation a foreign personal holding company;

(2) For the purpose of section 332 (e) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as foreign personal holding company income; and

(3) For the purpose of section 332 (f) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as foreign personal holding company income.

The requirement in paragraphs (1), (2), and (3) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included. (53 Stat. 93.)

Derived from Act May 28, 1938, c. 289, § 333, 52 Stat. 547.
Similar provisions. Acts June 22, 1936, c. 690, § 333, as added by Act Aug. 26, 1937, c. 815, Title II, § 201, 50 Stat. 819.

§ 334. **Gross income of foreign personal holding companies—(a) General rule.** As used in this Supplement with respect to a foreign corporation the term "gross income" means gross income computed (without regard to the provisions of Supplement I) as if the foreign corporation were a domestic corporation.

(b) **Additions to gross income.** In the case of a foreign personal holding company (whether or not a United States group, as defined in section 331 (a) (2), existed with respect to such company on the last day of its taxable year) which was a shareholder in another foreign personal holding company on the day in the taxable year (whether beginning before, on, or after January 1, 1939) of the second company which was the last day on which a United States group existed with respect to the second company, there shall be included, as a dividend, in the gross income of the first company, for the taxable year in which or with which the taxable year of the second company ends, the amount the first company would have received as a dividend if on such last day there had been distributed by the second company, and received by the shareholders, an amount which bears the same ratio to the undistributed Supplement P net income of the second company for its taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

(c) **Application of subsection (b).** The rule provided in subsection (b)—

(1) shall be applied in the case of a foreign personal holding company for the purpose of determining its undistributed Supplement P net income which, or a part of which, is to be included in the gross income of its shareholders, whether United States shareholders or other foreign personal holding companies;

(2) shall be applied in the case of every foreign corporation with respect to which a United States group exists on some day of its taxable year, for the purpose of determining whether such corporation meets the gross income requirements of section 331 (a) (1). (53 Stat. 94.)

Derived from Act May 28, 1938, c. 289, § 334, 52 Stat. 548.
Similar provisions. Acts June 22, 1936, c. 690, § 334, as added by Act Aug. 26, 1937, c. 815, Title II, § 201, 50 Stat. 820.

§ 335. **Undistributed Supplement P net income.** For the purposes of this chapter the term "undistributed Supplement P net income" means the Supplement P net income (as defined in section 336) minus the amount of the basic surtax credit provided in section 27 (b) (computed without its reduction, under section 27 (b) (1), by the amount of the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations). (53 Stat. 95.)

Derived from Act May 28, 1938, c. 289, § 335, 52 Stat. 548.
Similar provisions. Acts June 22, 1936, c. 690, § 335, as added by Act Aug. 26, 1937, c. 815, Title II, § 201, 50 Stat. 821.

§ 336. **Supplement P net income.** For the purposes of this chapter the term "Supplement P net income" means the net income with the following adjustments:

(a) **Additional deductions.** There shall be allowed as deductions—

(1) Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year to the extent not allowed as a deduction under section 23; but not including the tax imposed by section 102, section 500, or a section of a prior income-tax law corresponding to either of such sections.

(2) In lieu of the deduction allowed by section 23 (q), contributions or gifts payment of which is made within the taxable year to or for the use of donees described in section 23 (q) for the purposes therein specified, to an amount which does not exceed 15 per centum of the company's net income, computed without the benefit of this paragraph and section 23 (q), and without the deduction of the amount disallowed under subsection (b) of this section, and without the inclusion in gross income of the amounts includible therein as dividends by reason of the application of the provisions of section 334 (h) (relating to the inclusion in the gross income of a foreign personal holding company of its distributive share of the undistributed Supplement P net income of another foreign personal holding company in which it is a shareholder).

(b) **Deductions not allowed—(1) Taxes and pension trusts.** The deductions provided in section 23 (d), relating to taxes of a shareholder paid by the corporation, and in section 23 (p), relating to pension trusts, shall not be allowed.

(2) **Expenses and depreciation.** The aggregate of the deductions allowed under section 23 (a), relating to expenses, and section 23 (l) relating to depreciation, which are allocable to the operation and maintenance of property owned or operated by the company, shall be allowed only in an amount equal to the rent or other compensation received for the use or right to use the property, unless it is established (under regulations prescribed by the Commissioner with the approval of the Secretary) to the satisfaction of the Commissioner:

(A) That the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(B) That the property was held in the course of a business carried on bona fide for profit; and

(C) Either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

(3) **Net loss carry-over disallowed.** The deduction for net operating losses provided in section 23 (s) shall not be allowed. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 211 (g), 53 Stat. 869.)

(c) **Capital losses.** The net income shall be computed without regard to section 117 (d) and (e), and losses from sales or exchanges of capital assets shall be allowed only to the extent of \$2,000 plus the gains from such sales or exchanges. (53 Stat. 95, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, §§ 211, 212 (c), 53 Stat. 869.)

Subsec. (b), par. (3) was added by Act June 29, 1939, cited to text.

Subsec. (c) was added by Act June 29, 1939, cited to text, and made applicable only with respect to taxable years beginning after December 31, 1939 by § 229 of said act.

Derived from Act May 28, 1938, c. 289, § 336, 52 Stat. 549.

Similar provisions. Acts June 22, 1936, c. 690, § 336, as added by Act Aug. 26, 1937, c. 815, Title II, § 201, 50 Stat. 821.

§ 337. **Corporation income taxed to United States shareholders—(a) General rule.** The undistributed Supplement P net income of a foreign personal holding company shall be included in the gross income of the citizens or residents of the United States, domestic corporations, domestic partnerships, and estates or trusts (other than estates or trusts the gross income of which under this chapter includes only income from sources within the United States), who are shareholders in such foreign personal holding company

(hereinafter called "United States shareholders") in the manner and to the extent set forth in this Supplement.

(b) **Amount included in gross income.** Each United States shareholder, who was a shareholder on the day in the taxable year of the company which was the last day on which a United States group (as defined in section 331 (a) (2)) existed with respect to the company, shall include in his gross income, as a dividend, for the taxable year in which or with which the taxable year of the company ends, the amount he would have received as a dividend if on such last day there had been distributed by the company, and received by the shareholders, an amount which bears the same ratio to the undistributed Supplement P net income of the company for the taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

(c) **Credit for obligations of United States and its instrumentalities.** Each United States shareholder shall be allowed a credit against net income, for the purpose of the tax imposed by section 11, 13, 14, 201, 204, 207, or 362, of his proportionate share of the interest specified in section 25 (a) (1) or (2) which is included in the gross income of the company otherwise than by the application of the provisions of section 334 (b) (relating to the inclusion in the gross income of a foreign personal holding company of its distributive share of the undistributed Supplement P net income of another foreign personal holding company in which it is a shareholder).

(d) **Information in return.** Every United States shareholder who is required under subsection (b) to include in his gross income any amount with respect to the undistributed Supplement P net income of a foreign personal holding company and who, on the last day on which a United States group existed with respect to the company, owned 5 per centum or more in value of the outstanding stock of such company, shall set forth in his return in complete detail the gross income, deductions and credits, net income, Supplement P net income, and undistributed Supplement P net income of such company.

(e) **Effect on capital account of foreign personal holding company.** An amount which bears the same ratio to the undistributed Supplement P net income of the foreign personal holding company for its taxable year as the portion of such taxable year up to and including the last day on which a United States group existed with respect to the company bears to the entire taxable year, shall, for the purpose of determining the effect of distributions in subsequent taxable years by the corporation, be considered as paid-in surplus or as a contribution to capital and the accumulated earnings and profits as of the close of the taxable year shall be correspondingly reduced, if such amount or any portion thereof is required to be included as a dividend, directly or indirectly, in the gross income of United States shareholders.

(f) **Basis of stock in hands of shareholders.** The amount required to be included in the gross income of a United States shareholder under subsection (b) shall, for the purpose of adjusting the basis of his stock with respect to which the distribution would have been made (if it had been made), be treated as having been reinvested by the shareholder as a contribution to the capital of the corporation; but only to the extent to which such amount is included in his gross income in his return, increased or decreased by any adjustment of such amount in the last determination of the shareholder's tax liability, made before the expiration of seven years after the date prescribed by law for filing the return.

(g) **Basis of stock in case of death.**

For basis of stock or securities in a foreign personal holding company acquired from a decedent, see section 113 (a) (5).

(h) **Liquidation.**

For amount of gain taken into account on liquidation of foreign personal holding company, see section 115 (c).

(i) Period of limitation on assessment and collection.

For period of limitation on assessment and collection without assessment, in case of failure to include in gross income the amount properly includible therein under subsection (b), see section 275 (d).

(53 Stat. 96.)

Derived from Act May 28, 1938, c. 289, § 337, 52 Stat. 549. Similar provisions. Acts June 22, 1936, c. 690, § 337, as added by Act Aug. 26, 1937, c. 815, Title II, § 201, 50 Stat. 822.

§ 338. Information returns by officers and directors—(a) Monthly returns. On the fifteenth day of each month each individual who on such day is an officer or a director of a foreign corporation which, with respect to its taxable year preceding the taxable year (whether beginning on, before, or after January 1, 1939) in which such month occurs, was a foreign personal holding company, shall file with the Commissioner a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Commissioner with the approval of the Secretary shall by regulations prescribe as necessary for carrying out the provisions of this title. The Commissioner, with the approval of the Secretary, may by regulations prescribe, as the period with respect to which returns shall be filed, a longer period than a month. In such case the return shall be due on the fifteenth day of the succeeding period, and shall be filed by the individuals who on such day are officers and directors of the corporation.

(b) Annual returns. On the sixtieth day after the close of the taxable year of a foreign personal holding company each individual who on such sixtieth day is an officer or director of the corporation shall file with the Commissioner a return setting forth—

(1) In complete detail the gross income, deductions and credits, net income, Supplement P net income, and undistributed Supplement P net income of such foreign personal holding company for such taxable year; and

(2) The same information with respect to such taxable year as is required in subsection (a); except that if all the required returns with respect to such year have been filed under subsection (a) no information under this paragraph need be set forth in the return filed under this subsection. (53 Stat. 97.)

Derived from Act May 28, 1938, c. 289, § 338, 52 Stat. 551. Similar provisions. Acts June 22, 1936, c. 690, § 338, as added by Act Aug. 26, 1937, c. 815, Title II, § 201, 50 Stat. 823.

§ 339. Information returns by shareholders—(a) Monthly returns. On the fifteenth day of each month each United States shareholder, by or for whom 50 per centum or more in value of the outstanding stock of a foreign corporation is owned directly or indirectly (including in the case of an individual, stock owned by the members of his family as defined in section 333 (a) (2)), if such foreign corporation with respect to its taxable year preceding the taxable year (whether beginning on, before, or after January 1, 1939) in which such month occurs was a foreign personal holding company, shall file with the Commissioner a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Commissioner with the approval of the Secretary shall by regulations prescribe as necessary for carrying out the provisions of this title. The Commissioner, with the approval of the Secretary, may by regulations prescribe, as the period with respect to which returns

shall be filed, a longer period than a month. In such case the return shall be due on the fifteenth day of the succeeding period, and shall be filed by the persons who on such day are United States shareholders.

(b) Annual returns. On the sixtieth day after the close of the taxable year of a foreign personal holding company each United States shareholder by or for whom on such sixtieth day 50 per centum or more in value of the outstanding stock of such company is owned directly or indirectly (including in the case of an individual, stock owned by members of his family as defined in section 333 (a) (2)), shall file with the Commissioner a return setting forth the same information with respect to such taxable year as is required in subsection (a); except that if all the required returns with respect to such year have been filed under subsection (a) no return shall be required under this subsection. (53 Stat. 98.)

Derived from Act May 28, 1938, c. 289, § 339, 52 Stat. 551. Similar provisions. Acts June 22, 1936, c. 690, § 339, as added by Act Aug. 26, 1937, c. 815, Title II, § 201, 50 Stat. 823.

§ 340. Penalties. Any person required under section 338 or 339 to file a return, or to supply any information, who willfully fails to file such return, or supply such information, at the time or times required by law or regulations, shall, in lieu of the penalties provided in section 145 (a) for such offense, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$2,000, or imprisoned for not more than one year, or both. (53 Stat. 98.)

Derived from Act May 28, 1938, c. 289, § 340, 52 Stat. 552. Similar provisions. Act June 22, 1936, c. 690, § 341, as added by Act Aug. 26, 1937, c. 815, Title II, § 201, 50 Stat. 824.

SUPPLEMENT Q.—MUTUAL INVESTMENT COMPANIES

§ 361. Definition—(a) In general. For the purposes of this chapter the term "mutual investment company" means any domestic corporation (whether chartered or created as an investment trust, or otherwise), other than a personal holding company as defined in section 501, if—

(1) It is organized for the purpose of, and substantially all its business consists of, holding, investing, or reinvesting in stock or securities; and

(2) At least 95 per centum of its gross income is derived from dividends, interest, and gains from sales or other disposition of stock or securities; and

(3) Less than 30 per centum of its gross income is derived from the sale or other disposition of stock or securities held for less than six months; and

(4) An amount not less than 90 per centum of its net income is distributed to its shareholders as taxable dividends during the taxable year; and

(5) Its shareholders are, upon reasonable notice, entitled to redemption of their stock for their proportionate interests in the corporation's properties, or the cash equivalent thereof less a discount not in excess of 3 per centum thereof.

(b) Limitations. Despite the provisions of paragraph (1) a corporation shall not be considered as a mutual investment company if at any time during the taxable year—

(1) More than 5 per centum of the gross assets of the corporation, taken at cost, was invested in stock or securities, or both, of any one corporation, government, or political subdivision thereof, but this limitation shall not apply to investments in obligations of the United States or in obligations of any corporation organized under general Act of Congress if such corporation is an instrumentality of the United States; or

(2) It owned more than 10 per centum of the outstanding stock or securities, or both, of any one corporation; or

(3) It had any outstanding bonds or indebtedness in excess of 10 per centum of its gross assets taken at cost; or

(4) It fails to comply with any rule or regulation prescribed by the Commissioner, with the approval of the Secretary, for the purpose of ascertaining the actual ownership of its outstanding stock. (53 Stat. 98.)

Derived from Act May 28, 1938, c. 289, § 361, 52 Stat. 552.

Similar provisions. Act June 22, 1936, c. 690, § 48 (e), 49 Stat. 1669, as amended by Act Aug. 26, 1937, c. 815, Title VI, § 602, 50 Stat. 831.

§ 362. Tax on mutual investment companies—(a) Supplement Q net income. For the purposes of this chapter the term "Supplement Q net income" means the adjusted net income, computed without the net operating loss deduction provided in section 23 (s), minus the basic surtax credit computed under section 27 (b) without the application of paragraphs (2) and (3). (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 211 (h), 53 Stat. 869.)

(b) Imposition of tax. There shall be levied, collected, and paid for each taxable year upon the Supplement Q net income of every mutual investment company a tax equal to 18 per centum of the amount thereof. (53 Stat. 99, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, §§ 209, 211 (h), 53 Stat. 866, 869.)

Subsec. (a) was amended by section 211 (h) of Act June 29, 1939, cited to text.

Subsec. (b) was amended by section 209 of Act June 29, 1939, cited to text, and amendment made applicable only with respect to taxable years beginning after December 31, 1939 by § 229 of said act. Prior to said amendment subsection (b) read as follows:

"(b) **Imposition of tax.** There shall be levied, collected, and paid for each taxable year upon the Supplement Q net income of every mutual investment company a tax equal to 16½ per centum of the amount thereof."

Derived from Act May 28, 1938, c. 289, § 362, 52 Stat. 553.

SUPPLEMENT R.—EXCHANGES AND DISTRIBUTIONS IN OBEDIENCE TO ORDERS OF SECURITIES AND EXCHANGE COMMISSION

§ 371. Nonrecognition of gain or loss—(a) Exchanges of stock or securities only. No gain or loss shall be recognized to the transferor if stock or securities in a corporation which is a registered holding company or a majority-owned subsidiary company are transferred to such corporation or to an associate company thereof which is a registered holding company or a majority-owned subsidiary company solely in exchange for stock or securities (other than stock or securities which are nonexempt property), and the exchange is made by the transferee corporation in obedience to an order of the Securities and Exchange Commission.

(b) Exchanges of property for property by corporations. No gain or loss shall be recognized to a transferor corporation which is a registered holding company or an associate company of a registered holding company, if such corporation, in obedience to an order of the Securities and Exchange Commission transfers property solely in exchange for property (other than nonexempt property), and such order recites that such exchange by the transferor corporation is necessary or appropriate to the integration or simplification of the holding company system of which the transferor corporation is a member.

(c) Distribution of stock or securities only. If there is distributed, in obedience to an order of the Securities and Exchange Commission, to a shareholder in a corporation which is a registered holding company or a majority-owned subsidiary company, stock or securities (other than stock or securities which are nonexempt property), without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee from the receipt of the stock or securities so distributed shall be recognized.

(d) Transfers within system group. (1) No gain or loss shall be recognized to a corporation which is a member of a system group (A) if such corporation transfers property to another corporation which is a member of the same system group in exchange for other property, and the exchange by each corporation is made in obedience to an order of the Securities and Exchange Commission, or (B) if there is distributed to such corporation as a shareholder in a cor-

poration which is a member of the same system group, property, without the surrender by such shareholder of stock or securities in the corporation making the distribution, and the distribution is made and received in obedience to an order of the Securities and Exchange Commission. If an exchange by or a distribution to a corporation with respect to which no gain or loss is recognized under any of the provisions of this paragraph may also be considered to be within the provisions of subsection (a), (b), or (c), then the provisions of this paragraph only shall apply.

(2) If the property received upon an exchange which is within any of the provisions of paragraph (1) of this subsection consists in whole or in part of stock or securities issued by the corporation from which such property was received, and if in obedience to an order of the Securities and Exchange Commission such stock or securities (other than stock which is not preferred as to both dividends and assets) are sold and the proceeds derived therefrom are applied in whole or in part in the retirement or cancellation of stock or of securities of the recipient corporation outstanding at the time of such exchange, no gain or loss shall be recognized to the recipient corporation upon the sale of the stock or securities with respect to which such order was made; except that if any part of the proceeds derived from the sale of such stock or securities is not so applied, or if the amount of such proceeds is in excess of the fair market value of such stock or securities at the time of such exchange, the gain, if any, shall be recognized, but in an amount not in excess of the proceeds which are not so applied, or in an amount not more than the amount by which the proceeds derived from such sale exceed such fair market value, whichever is the greater.

(e) Exchanges not solely in kind. (1) If an exchange (not within any of the provisions of subsection (d)) would be within the provisions of subsection (a) or (b) if it were not for the fact that property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain or loss, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property, and the loss, if any, to the recipient shall not be recognized.

(2) If an exchange is within the provisions of paragraph (1) of this subsection and if it includes a distribution which has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under such paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under such paragraph (1) shall be taxed as a gain from the exchange of property.

(f) Application of section. The provisions of this section shall not apply to an exchange or distribution unless (1) the order of the Securities and Exchange Commission in obedience to which such exchange or distribution was made recites that such exchange or distribution is necessary or appropriate to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935, 49 Stat. 820, (U. S. C., Sup. III, Title 15, § 79 (b)), (2) such order specifies and itemizes the stock and securities and other property which are ordered to be transferred and received upon such exchange or distribution, and (3) such exchange or distribution was made in obedience to such order and was completed within the time prescribed therefor in such order.

(g) Non-application of other provisions. If an exchange or distribution made in obedience to an order of the Securities and Exchange Commission is within any of the provisions of this section and may also be considered to be within any of the provisions of section 112 (other than the provisions of paragraph (8) of subsection (b)), then the provisions of this section only shall apply. (53 Stat. 99.)

Derived from Act May 28, 1938, c. 289, § 371, 52 Stat. 553.

§ 372. Basis for determining gain or loss—(a) Exchanges generally. If the property was acquired upon an exchange subject to the provisions of section 371 (a), (b), or (e), the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 371 (a) or (b) to be received without the recognition of gain or loss, and in part of nonexempt property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such nonexempt property (other than money) an amount equivalent to its fair market value at the date of the exchange. This subsection shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it.

(b) Transfers to corporations. If, in connection with a transfer subject to the provisions of section 371 (a), (b), or (e), the property was acquired by a corporation, either as paid-in surplus or as a contribution to capital, or in consideration for stock or securities issued by the corporation receiving the property (including cases where part of the consideration for the transfer of such property to the corporation consisted of property or money in addition to such stock or securities), then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

(c) Distributions of stock or securities. If the stock or securities were received in a distribution subject to the provisions of section 371 (c), then the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, between such stock and the stock or securities distributed.

(d) Transfers within system group. If the property was acquired by a corporation which is a member of a system group upon a transfer or distribution described in section 371 (d) (1), then the basis shall be the same as it would be in the hands of the transferor; except that if such property is stock or securities issued by the corporation from which such stock or securities were received and they were issued (1) as the sole consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either (A) the same as in the case of the property transferred therefor, or (B) the fair market value of such stock or securities at the time of their receipt, whichever is the lower; or (2) as part consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either (A) an amount which bears the same ratio to the basis of the property transferred as the fair market value of such stock or securities at the time of their receipt bears to the total fair market value of the entire consideration received, or (B) the fair market value of such stock or securities at the time of their receipt, whichever is the lower. (53 Stat. 101.)

Derived from Act May 28, 1938, c. 289, § 372, 52 Stat. 555.

§ 373. Definitions. As used in this supplement—

(a) The term "order of the Securities and Exchange Commission" means an order (1) issued after May 28, 1938, and prior to January 1, 1941, by the Securities and Exchange Commission to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935, 49 Stat. 820 (U. S. C., Supp. III, Title 15, § 79 (b)), or (2) issued by the Commission subsequent to December 31, 1940, in which it is expressly stated that an order of the character

specified in clause (1) is amended or supplemented, and (3) which has become final in accordance with law. (As amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 221 (a), 53 Stat. 878.)

(b) The terms "registered holding company", "holding-company system", and "associate company" shall have the meanings assigned to them by section 2 of the Public Utility Holding Company Act of 1935, 49 Stat. 804 (U. S. C., Supp. III, Title 15, § 79 (b), (c)).

(c) The term "majority-owned subsidiary company" of a registered holding company means a corporation, stock of which, representing in the aggregate more than 50 per centum of the total combined voting power of all classes of stock of such corporation entitled to vote (not including stock which is entitled to vote only upon default or nonpayment of dividends or other special circumstances) is owned wholly by such registered holding company, or partly by such registered holding company and partly by one or more majority-owned subsidiary companies thereof, or by one or more majority-owned subsidiary companies of such registered holding company.

(d) The term "system group" means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(1) At least 90 per centum of each class of the stock (other than stock which is preferred as to both dividends and assets) of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

(2) The common parent corporation owns directly at least 90 per centum of each class of the stock (other than stock which is preferred as to both dividends and assets) of at least one of the other corporations; and

(3) Each of the corporations is either a registered holding company or a majority-owned subsidiary company.

(e) The term "nonexempt property" means—

(1) Any consideration in the form of a cancellation or assumption of debts or other liabilities (including a continuance of encumbrances subject to which the property was transferred);

(2) Short-term obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding twenty-four months, exclusive of days of grace;

(3) Securities issued or guaranteed as to principal or interest by a government or subdivision thereof (including those issued by a corporation which is an instrumentality of a government or subdivision thereof);

(4) Stock or securities which were acquired after February 28, 1938, unless such stock or securities (other than obligations described as nonexempt property in paragraph (2) or (3)) were acquired in obedience to an order of the Securities and Exchange Commission;

(5) Money, and the right to receive money not evidenced by a security other than an obligation described as nonexempt property in paragraph (2) or (3).

(f) The term "stock or securities" means shares of stock in any corporation, certificates of stock or interest in any corporation, notes, bonds, debentures, and evidences of indebtedness (including any evidence of an interest in or right to subscribe to or purchase any of the foregoing). (53 Stat. 102, as amended June 29, 1939, 10 p. m. E. S. T., c. 247, Title II, § 221, 53 Stat. 878.)

Subsec. (a) was amended by Act June 29, 1939, cited to text, and made applicable to taxable years beginning after December 31, 1938, by § 221 (b) of said act.

Derived from Act May 28, 1938, c. 289, § 373, 52 Stat. 556.

Chapter 2.—ADDITIONAL INCOME TAXES

SUBCHAPTER A.—PERSONAL HOLDING COMPANIES

- Sec. 500. Surtax on personal holding companies.
- 501. Definition of personal holding company.
- 502. Personal holding company income.
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